

DDA Exhibit C1



**CITY AND COUNTY OF SAN FRANCISCO  
EDWIN LEE, MAYOR**

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**FINANCING PLAN**

**BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO,  
ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION**

**AND**

**FC PIER 70, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**

**28-ACRE SITE**

**[REFERENCE DATE]**

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**ELAINE FORBES, EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**WILLIE ADAMS, PRESIDENT  
KIMBERLY BRANDON, VICE PRESIDENT  
LESLIE KATZ, COMMISSIONER  
DOREEN WOO HO, COMMISSIONER**

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## FINANCING PLAN

This **FINANCING PLAN** implements, is a part of, and is attached as **DDA Exhibit C1** to and incorporated into the Disposition and Development Agreement (the “**DDA**”) between the City and County of San Francisco (including its agencies and departments, the “**City**”), acting by and through the San Francisco Port Commission (the “**Port**” or the “**Port Commission**”), and FC Pier 70, LLC (“**Developer**”) (each, a “**Party**”).

Initially capitalized and other terms are defined in the Appendix to Transaction Documents for the Pier 70 Mixed-Use Project (herein, the “Appendix”) or in other Transaction Documents as specified in the Appendix, which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents.

### 1. FINANCING OVERVIEW

#### 1.1. Financing Plan Term.

(a) Effective Date. This Financing Plan, as part of the DDA, becomes effective on the Reference Date. Because certain financial obligations and rights will continue after the Horizontal Improvements reach Final Completion, the Parties have agreed that this Financing Plan will have an independent termination date and continue in effect after the DDA Term ends, subject to *DDA § 12.10 (Effects of Termination on Project Payment Sources)*.

(b) Termination. This Financing Plan will terminate when it has been fully performed by the following actions:

- (i) the Port has conveyed all Development Parcels to Vertical Developers and Land Proceeds have been applied to the Project Payment Obligation or revenue-sharing;
- (ii) the Port has satisfied the Project Payment Obligation; and
- (iii) revenue-sharing under this Financing Plan is complete.

**1.2. Funding Goals.** This Financing Plan establishes the contractual framework for financing horizontal development of the Project in accordance with the DDA and to achieve the following Funding Goals.

- Construct Horizontal Improvements in the FC Project Area in coordination with vertical development of the 28-Acre Site and minimize excess carrying costs of horizontal development.
- Use Public Financing Sources to leverage other sources and enhance the Port’s ability to satisfy the Project Payment Obligation and each Party’s anticipated share of Project Surplus.
- Provide Developer with the opportunity to achieve a market-rate Developer Return on its use of Developer Capital for Horizontal Development Costs.
- Provide the Port with the opportunity to achieve a market-rate Return on Port Capital on its use of Port Capital for Horizontal Development Costs.
- Meet affordable housing goals that San Francisco voters established as City policy by adopting Proposition F.
- Provide the Port with Fair Market Value for Parcel K North and each Option Parcel in compliance with AB 418.
- Use tax-exempt debt to the extent reasonably feasible, consistent with this Financing Plan and Governing Law and Policy.

- Protect the Parties' investments in Horizontal Improvements by providing a funding source for Ongoing Maintenance Costs.
- Provide a mechanism for San Francisco to adapt to rising sea levels and protect its land, residents, and businesses by financing Pier 70 Shoreline Protection Facilities and other Port capital needs after full Project build-out.
- Implement sound and prudent municipal fiscal policies that protect the City General Fund, the Port Harbor Fund, and the City's and the Port's respective financial standings and fiduciary obligations, while operating in the constraints of this Financing Plan and Governing Law and Policy.

**1.3. Overview of Financing Districts.** As part of the Project Approvals, the Board of Supervisors has formed or has agreed to form the following financing districts, each of which is discussed in more detail in **Article 4** (Mello-Roos Taxes), **Article 6** (Tax Increment), and **Article 12** (Affordable Housing) and shown in **FP Schedule 4**, which outlines the financing districts described in this Section.

(a) Pier 70 Leased Property CFD. The Pier 70 Leased Property CFD at formation will include certain Pier 70 Leased Property. As indicated in **FP Schedule 4**, the CFD will consist of three Zones and a Future Annexation Area. Zone 1 will include all Development Parcels to be developed as NOI Property in Phase 1 other than Historic Building 12. Zone 2 will include all Development Parcels to be developed as NOI Property in future phases except Historic Building 21. Zone 3 will include Historic Building 12 and Historic Building 21.

(i) Facilities Special Taxes from all three Zones will be applied to the following, in the order of priority listed:

(1) Capital Costs, consisting of Entitlement Costs, other Horizontal Development Costs, Developer Capital and Developer Return, and Port Capital and Return on Port Capital, incurred in the horizontal development of the FC Project Area;

(2) PNLN Payments, which will be disbursed from the Land Proceeds Fund for revenue-sharing under this Financing Plan; and

(3) the Historic Building Feasibility Gap.

(ii) Shoreline Special Taxes from Zones 1 and 2 will be applied as set forth in **Section 4.7** (Reserve and Shoreline Facilities Accounts).

(iii) A total of \$20 million in the aggregate of Arts Building Special Taxes from Zones 1 and 2 of the Pier 70 Leased Property CFD and Zone 2 of the Pier 70 Condo CFD will be deposited into the Arts Building Account and applied as described in **Section 10.2** (Arts Building Funding), to the extent of available funds.

(iv) The Future Annexation Area consists of Parcels E1, F, G, H1, H2, and C1A. Additionally, Parcel E4 and Parcel K South will be identified as Future Annexation Area, which will allow either parcel to be annexed to the Pier 70 Leased Property CFD if they cease to be used for the purposes specified in the DDA.

(v) The Pier 70 Leased Property CFD will include a Facilities CFD and a Services CFD.

(vi) The RMA for the Facilities CFD will authorize the CFD to levy Facilities Special Taxes on each Taxable Parcel in the Pier 70 Leased Property CFD. Under the RMA, the Pier 70 Leased Property CFD will levy

Facilities Special Taxes at different rates for Market-Rate Rental Projects and Taxable Commercial Parcels.

**(vii)** Facilities Special Taxes will be deposited into the following subaccounts of the Facilities Special Tax Fund of the Special Fund Trust Account that the Pier 70 Leased Property CFD will establish:

**(1)** the Capital Improvements Account, which will be used to pay directly for Horizontal Improvements, pay the Parties for their Capital Costs, and for any other use allowed under this Financing Plan;

**(2)** the Project Reserve Account, for use as a project reserve for Capital Costs and any other use allowed under this Financing Plan;

**(3)** the Arts Building Account with the Arts Building Special Taxes for the Noonan Replacement Space, Arts Building Funding, and community space; and

**(4)** the Shoreline Reserve Account with a portion of the Facilities Special Taxes to fund Shoreline Adaptation Studies and, after the Shoreline Protection Project is approved, Pier 70 Shoreline Protection Facilities.

**(viii)** The Services CFD will levy Services Special Taxes on each Taxable Parcel in the Pier 70 Leased Property CFD to pay for Ongoing Maintenance Costs of the FC Project Area Maintained Facilities, which will be:

**(1)** Public Spaces in the FC Project Area;

**(2)** Public ROWs in FC Project Area; and

**(3)** Shoreline Improvements in and adjacent to the FC Project Area.

**(b)** Pier 70 Condo CFD. The Pier 70 Condo CFD at formation will include Parcel K North and Parcels C1C, C2B, and D, which the Port will sell for development as Residential Condo Projects. The CFD will consist of two Zones and a Future Annexation Area. Zone 1 will consist of Parcel K North. Zone 2 will include all Residential Condo Projects in the 28-Acre Site.

**(i)** Facilities Special Taxes from both Zones (except as indicated below) will be applied to the following, in the order of priority listed:

**(1)** the Michigan Street segment;

**(2)** FC Project Area Capital Costs;

**(3)** PNLN Payments, which will be disbursed from the Land Proceeds Fund for revenue-sharing under this Financing Plan;

**(4)** Pier 70 Shoreline Protection Facilities (from Zone 2 of the Pier 70 Condo CFD only); and

**(5)** Shoreline Adaptation Studies and Shoreline Protection Facilities.

**(ii)** A total of \$20 million in the aggregate of Arts Building Special Taxes from Zone 2 of the Pier 70 Condo CFD and Zones 1 and 2 of the Pier 70 Leased Property CFD will be deposited into the Arts Building Account and applied as specified in **clause (iii)** of **Subsection 1.3(a)** (Pier 70 Leased Property CFD).

**(iii)** The Future Annexation Area consists of Parcels E1, F, G, H1, H2, and C1A. Additionally, Parcel E4 and Parcel K South will be identified as Future Annexation Area, which will allow either parcel to be annexed to the Pier 70 Condo CFD if they cease to be used for the purposes specified in the DDA.

**(iv)** The Pier 70 Condo CFD will include a Facilities CFD and a Services CFD.

**(v)** The RMA for the Pier 70 Condo CFD will authorize the CFD to levy Facilities Special Taxes on each Taxable Residential Unit in the Pier 70 Condo CFD.

**(vi)** Facilities Special Taxes will be deposited into the following subaccounts of the Facilities Special Tax Fund of the Special Fund Trust Account that the Pier 70 Condo CFD will establish:

**(1)** the Capital Improvements Account, which will be used: (A) to pay directly for the Michigan Street segment; (B) to pay directly for Horizontal Improvements in the FC Project Area; (C) to pay the Parties' outstanding Capital Costs; and (D) for any other use allowed under this Financing Plan; and

**(2)** the Arts Building Account with the Arts Building Special Taxes.

**(vii)** The Services Special Taxes levied on each Taxable Residential Unit in Zone 1 of the Pier 70 Condo CFD will pay the Ongoing Maintenance Costs of the Parcel K North Maintained Facilities, which will be:

**(1)** Public Spaces in Zone 1;

**(2)** Public ROWs in Zone 1;

**(3)** other Public Spaces outside of the FC Project Area and the 20<sup>th</sup> Street CFD;

**(4)** other Public ROWs in Pier 70 north of 20<sup>th</sup> Street and outside of the 20<sup>th</sup> Street CFD; and

**(5)** the costs of Shoreline Protection Facilities.

**(viii)** The Services Special Taxes levied on each Taxable Residential Unit in Zone 2 of the Pier 70 Condo CFD will pay the Ongoing Maintenance Costs of the FC Project Area Maintained Facilities, which will be:

**(1)** Public Spaces in Zone 2;

**(2)** Public ROWs in Zone 2 and

**(3)** Shoreline Improvements in and adjacent to the FC Project Area.

**(c)** Hoedown Yard CFD. The Hoedown Yard CFD will include the Hoedown Yard, and will include a Facilities CFD and a Services CFD.

**(i)** The RMA will authorize the Hoedown Yard CFD to levy Facilities Special Taxes on each Taxable Parcel in the Hoedown Yard CFD.

**(ii)** Hoedown Yard CFD Proceeds will be used to finance the following, in the following order of priority:

**(1)** Irish Hill Park;

(2) acquisition of shoreline space near the former Hunters Point Power Plant; and

(3) other Port Capital Costs.

(iii) The Services Special Taxes on each Taxable Parcel in the Hoedown Yard CFD will pay the Ongoing Maintenance Costs of the Hoedown Yard Maintained Facilities, which will be:

(1) Public Spaces in the Hoedown Yard CFD;

(2) Public ROWs in the Hoedown Yard CFD;

(3) other Public Spaces outside of the FC Project Area and the 20<sup>th</sup> Street CFD;

(4) other Public ROWs in Pier 70 north of 20<sup>th</sup> Street and outside of the 20<sup>th</sup> Street CFD; and

(5) the costs of Shoreline Protection Facilities.

(d) IFD Sub-Project Areas G-1, G-2, G-3, and G-4. Sub-Project Area G-1 covers the Historic Core, and IFD Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4, collectively, cover the FC Project Area and Parcel K North.

(i) Appendix G-1 and Appendix G-2 authorize the IFD to use Allocated Tax Increment from all of the Sub-Project Areas in Project Area G to meet the Waterfront Set-Aside requirement under IFD Law on a Project Area G-wide basis rather than on a sub-project area basis.

(ii) Under Appendix G-2, the IFD is authorized to pledge and use Project Tax Increment to pay directly for Capital Costs for the FC Project Area, subject to the Interest Cost Limitation, and to pay Special Debt Service on Mello-Roos Bonds and debt service on Tax Increment Bonds issued to finance Capital Costs for the FC Project Area.

(iii) Appendix G-2 authorizes the IFD to pledge and use Port Tax Increment to pay the Historic Building Feasibility Gap, to pay directly for Port Improvements at Pier 70 outside of the FC Project Area, and to pay Special Debt Service on Mello-Roos Bonds and debt service on Tax Increment Bonds issued to finance Port Improvements at Pier 70 outside of the FC Project Area.

(e) IRFD. The IRFD covers the Hoedown Yard, except for the portion of Michigan Street that bisects PG&E's property, which must be annexed to the IRFD after the City transfers it to the developer because the City is not a landowner under the IRFD Law. The IRFD Financing Plan and IRFD Formation Proceedings provide for the annexation. The IRFD Financing Plan authorizes the IRFD to use Allocated Housing Tax Increment to finance construction on the Affordable Housing Parcels in the 28-Acre Site and Parcel K South.

#### **1.4. Summary Proforma.**

(a) Contents. **FP Schedule 1** (Summary Proforma) contains the following key projections and estimates for each Phase and for the horizontal development as a whole:

(i) Developer's Entitlement Sum and line item estimates by category;

(ii) Developer's Site Preparation costs by line item;



(iii) application of Developer Capital and each other anticipated source, including Advances of Land Proceeds, to Horizontal Development Costs other than those listed in **clause (i)** and **clause (ii)**;

(iv) accrual of Developer Return on Entitlement Costs, costs of Site Preparation, and other Horizontal Development Costs;

(v) accrual of Interest on Land Proceeds;

(vi) the market value of each Option Parcel assuming entitlements are in place, also referred to as Land Value Indicators;

(vii) the market value of Parcel K North assuming entitlements are in place;

(viii) the rehabilitation costs and amounts of the Historic Building Feasibility Gaps for Historic Building 12 and Historic Building 21;

(ix) the Arts Building Funding;

(x) the funding gap for affordable housing development on the Affordable Housing Parcels;

(xi) levy and allocation of Mello-Roos Taxes;

(xii) growth and allocation of Project Tax Increment;

(xiii) bonding capacity for the Project; and

(xiv) Project Surplus available for revenue-sharing.

(b) Assumptions. The Proforma incorporates certain assumptions that informed the drafting of this Financing Plan. Proforma assumptions include the following:

(i) Financing districts described in this Financing Plan will be established and Tax Revenues from each district will be available for their authorized uses.

(ii) Development Parcels will be developed for both residential and commercial-office uses at densities described as the “*Mid-Point Project*” in the Land Use Plan and Design for Development.

(iii) Two Development Parcels in the 28-Acre Site and Parcel K South will be designated for development by Affordable Housing Developers. As described in **Article 12** (Affordable Housing) and in *DDA Ex. B5*, the financing sources for these parcels will include 28-Acre Site Affordable Housing Fees, 28-Acre Site Jobs/Housing Equivalency Fees, and Housing Tax Increment.

(iv) Entitlement Costs on the 28-Acre Site will be paid by early Project Payment Sources expected to consist of a combination of Early Mello-Roos Bond Proceeds and an Advance of Land Proceeds from the Port’s sale of Parcel K North.

(v) The Port will convey Option Parcels in fee or by ground lease for Fair Market Value determined under *DDA art. 7 (Parcel Conveyances)*.

(vi) Developer will exercise its Options for all Option Parcels through Vertical Developer Affiliates, which will enter into Vertical DDAs in the form of *DDA Exh D3*, which will specify ground rent or purchase prices payable on terms described in this Financing Plan.

(vii) The Port shall ask the City to issue Mello-Roos Bonds on behalf of each CFD for the applicable Phase and use the proceeds to pay the Project Payment Obligation or to pay directly for Phase Improvements, or both based on the approved Phase Budget.

(viii) Advances of Land Proceeds and Public Financing Sources, when available, will be preferred over capital sources to pay the costs of Phase Improvements.

(ix) Whenever the Project Payment Obligation for a Current Phase includes both a Developer Balance and a Port Balance, Developer and the Port will be paid by available Project Payment Sources as specified in **Subsection 2.4(e)** (Pro Rata Payments).

(c) Future Events.

(i) Both Parties acknowledge that the Proforma is illustrative only, and future events that do not conform to Proforma assumptions will not provide the applicable Party with a unilateral right to:

(1) disapprove a Payment Request based solely on a difference between actual costs and estimated costs in the Proforma;

(2) disapprove a Payment Request based solely on a difference between actual revenues and estimated revenues in the Proforma;

(3) demand payment under a Payment Request for estimated costs included in the Proforma that Developer did not actually incur;

(4) demand payment under a Payment Request if estimated revenues in the Proforma exceed actual revenues or are not available when projected;

(5) amend this Financing Plan; or

(6) terminate the DDA.

(ii) The Parties agree that the Port may reasonably rely on the updated proforma that Developer submits for a Phase to determine whether to make a Port Capital Advance in that Phase and to size any requests that the City issue Bonds under this Financing Plan.

(iii) To the extent that horizontal development varies from Proforma assumptions, certain provisions of this Financing Plan will no longer apply and will be deemed severed from this Financing Plan.

**1.5. Payment Sources for the FC Project Area .** This Financing Plan describes the Parties' agreement as to the Project Payment Sources for the Entitlement Sum and Horizontal Development Costs in the FC Project Area and the treatment of those sources. An overview follows, subject to more detailed conditions in **Article 3** (Land Proceeds), **Article 4** (Mello-Roos Taxes), **Article 5** (Mello-Roos Bonds), **Article 6** (Tax Increment), and **Article 7** (Port Advances).

(a) Mello-Roos Bond Proceeds.

(i) Mello-Roos Bonds secured and payable by Facilities Special Taxes or Project Tax Increment, or both, will be the preferred public financing approach for a significant amount of the Phase Improvement Costs.

(ii) Governing Law and Policy will prevail over any conflict with this Financing Plan or any other part of the DDA relating to Project Payment Sources.

(b) Port Sources.

(i) Advances of Land Proceeds and Public Financing Sources are the only sources that the Port is required to apply to the Project Payment Obligation; provided, however, additional sources might be available to apply to the Project Payment Obligation pursuant to **Section 1.7** (Additional Sources).

(ii) The Port may use Port Capital Advances to pay directly for Horizontal Improvements or to satisfy an outstanding Developer Balance when Public Financing Sources are not available.

(c) Developer Capital.

(i) Developer has used and will use Developer Capital to pay directly for Entitlement Costs and Horizontal Development Costs when Land Proceeds, Port Capital, and Public Financing Sources are not available.

(ii) The Port will make progress payments from time to time on behalf of the Acquiring Agencies in accordance with this Financing Plan and the Acquisition Agreement in the form of **FP Exhibit A**.

(d) Pier 70 Leased Property CFD Improvement Special Taxes. Improvement Special Taxes from the Pier 70 Leased Property CFD will fund, in no particular order:

(i) the Entitlement Sum;

(ii) Developer Return;

(iii) Horizontal Development Costs;

(iv) Port Capital and Return on Port Capital;

(v) the Noonan Replacement Space, the Arts Building Funding, and other community facilities under the conditions specified in **Section 10.2** (Arts Building Funding);

(vi) the Historic Building Feasibility Gap as specified in **Section 11.1** (Subsidy for Historic Buildings 12 and 21);

(vii) PNLP Payments;

(viii) Shoreline Adaptation Studies and Shoreline Protection Facilities;

and

(ix) Pier 70 Shoreline Protection Facilities.

(e) Pier 70 Condo CFD Improvement Special Taxes. Improvement Special Taxes from the Pier 70 Condo CFD will fund, in no particular order:

(i) the Michigan Street segment;

(ii) the Entitlement Sum;

(iii) Developer Return;

(iv) Horizontal Development Costs;

(v) Port Capital and Return on Port Capital;

(vi) Excluding Facilities Special Taxes levied in Zone 1 of the Pier 70 Condo CFD, the Noonan Replacement Space, the Arts Building Funding, and other community facilities under conditions specified in **Section 10.2** (Arts Building Funding);

(vii) the Historic Building Feasibility Gap;

- (viii) PNLP Payments;
- (ix) Pier 70 Shoreline Protection Facilities (from Zone 2 of the Pier 70 Condo CFD only); and
- (x) Shoreline Adaptation Studies and Shoreline Protection Facilities.

(f) Project Tax Increment. Subject to the Interest Cost Limitation, Allocated Project Tax Increment and proceeds of Tax Increment Bonds secured and payable by Project Tax Increment will fund, in no particular order:

- (i) the Entitlement Sum;
- (ii) Developer Return;
- (iii) Horizontal Development Costs;
- (iv) Port Capital and Return on Port Capital;
- (v) the Historic Building Feasibility Gap;
- (vi) 20<sup>th</sup>/Illinois Plaza;
- (vii) PNLP Payments; and
- (viii) Pier 70 Shoreline Protection Facilities.

**1.6. Other Sources and Costs.** This Financing Plan describes the Parties' agreement as to public sources for other Improvements in the SUD and the treatment of those sources. An overview follows, subject to more detailed conditions in **Article 1010** (Arts Building), **Article 11** (Historic Buildings), and **Article 12** (Affordable Housing), in addition to relevant provisions of the Articles listed in **Section 1.5** (Payment Sources for the FC Project Area).

(a) Historic Building Feasibility Gap. The Port has agreed to use a portion of Port Tax Increment to fund the Historic Building Feasibility Gap.

(b) 20<sup>th</sup>/Illinois Plaza. The 20<sup>th</sup>/Illinois Plaza will be an obligation of the Vertical Developer that the Port selects to develop Parcel K North. The construction costs of these Improvements will be treated as an Advance of Land Proceeds under **Subsection 7.4(a)** (Parcel K North).

(c) Waterfront Set-Aside. Under the IFD Law, the Port will apply Allocated Tax Increment from Sub-Project Area G-1, Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4 to fund Improvements required by the IFD Law.

(d) Interim Lease Revenues. Interim Lease Revenues when reported as Percentage Rent under the Master Lease will be applied by the Port as a credit toward Land Proceeds from which Port will make Advances of Land Proceeds in accordance with **Section 7.3** (Advances of Land Proceeds) hereof up to Interim Satisfaction, and thereafter, for revenue sharing to the Developer in the Developer Share and to the Port in the Port Share.

**1.7. Additional Sources.**

(a) Cooperation. The City, the Port, and Developer will cooperate to identify additional sources and incentives that might be available for Horizontal Improvements and Vertical Improvements at the FC Project Area, such as incentives for historic rehabilitation, brownfield remediation, transit-oriented development, and sustainable development.

(b) Conditions to Other Sources. The Parties must agree to use any permitted source that is not identified in this Financing Plan as a Project Payment Source for

Capital Costs. Any potential new source other than Port Capital that meets all of the following conditions will be deemed to be permitted if it:

- (i) is less costly than Developer Capital;
  - (ii) does not materially increase the overall cost of Horizontal Improvements;
  - (iii) does not increase the time for implementation, cost, or financing of any Phase;
  - (iv) does not impose additional regulations and restrictions that are inconsistent with this Financing Plan or the DDA;
  - (v) does not require the Improvements to be made out of sequence with the Phasing Plan in effect when the funds would be available if resequencing would cause a material cost increase;
  - (vi) does not result in lower residual values for Option Parcels; and
  - (vii) does not impose requirements that would create a material negative impact on Developer's ability to market and transfer the Development Parcels.
- (c) Horizontal Development Costs. Administrative costs and additional work required by accepting a new source will be eligible for reimbursement under this Financing Plan as Hard Costs or Soft Costs, as applicable.

**1.8. Limitation on Sources.** Developer acknowledges that none of the following is a Project Payment Source to pay directly or secure and pay Bonds issued to pay Developer's Horizontal Development Costs at the FC Project Area under any circumstances not specified in this Financing Plan:

- (a) City General Fund;
- (b) Port Harbor Fund other than Land Proceeds and any Port Capital that the Port commits to use;
- (c) Facilities Special Taxes deposited in the Shoreline Reserve Account or special taxes collected from outside of the Pier 70 Leased Property CFD or the Pier 70 Condo CFD; or
- (d) Tax Increment in the Special Fund Trust Account holding Port Tax Increment (except to the extent used for Historic Buildings Feasibility Gap), Housing Increment, or Tax Increment from outside of the 28-Acre Site and Parcel K North, except as specified in **Subsection 1.6(b)** (Waterfront Set-Aside).

**1.9. Special Fund Accounts.** Table 2 in Schedule 4 lists each Project Payment Source described in this Financing Plan and specifies the person responsible for receiving, administering, and disbursing each source. This listing is without prejudice to the Port's right to amend these funds or form new ones for convenience or efficiency. Changes affecting Mello-Roos Taxes or Tax Increment from the 28-Acre Site and Parcel K North will be subject to Developer's consent until the Project Payment Obligation and Promissory Note-LP have been fully paid.

## 2. FLOW OF FUNDS

**2.1. Port Payments.** References in any Transaction Document to Port payments or disbursements will mean any of the following funds of the Port, any CFD, the IFD, or the IRFD that are applied as described in this Financing Plan and illustrated in **FP Schedule 4**:

- (a) Land Proceeds from Parcel K North and the 28-Acre Site that the Port uses to make Advances to the Pier 70 CFDs to pay Capital Costs, which the Escrow

Agent will disburse from the Escrow Account as specified in an approved Payment Request and in the priority set forth in **Section 2.4(d)** (Priorities for Payments);

(b) Port Capital that the Port uses to make Advances to the Pier 70 CFDs to pay Developer's Capital Costs, which the Port will disburse as specified in an approved Payment Request;

(c) Mello-Roos Taxes that the Special Fund Trustee disburses from the applicable segregated account in the Facilities Special Tax Fund as specified in an approved Payment Request;

(d) Project Tax Increment that the Special Fund Trustee disburses from the applicable segregated account in the Tax Increment Fund as specified in an approved Payment Request;

(e) Bond Proceeds that an Indenture Trustee disburses from the applicable Capital Improvement Account under an Indenture to pay Capital Costs (subject to the Interest Cost Limitation, if applicable), Promissory Note-LP, and Promissory Note-X (from Mello-Roos-only Bonds) under an Indenture and as specified in an approved Payment Request;

(f) Interim Satisfaction Balance that the Special Fund Trustee disburses from the Revenue Account or as otherwise set forth in this Financing Plan;

(g) Project Surplus that the Special Fund Trustee disburses from the Revenue Account after the Final Audit; and

(h) Housing Tax Increment that the Special Fund Trustee disburses to MOHCD.

## **2.2. Payment Process Generally.**

(a) Payment Request. As specified in more detail in *AA art. 4 (Payment Requests)*, Developer must prepare a Payment Request in the form of *AA Exh C (Payment Request)* and attach supporting documents to initiate the payment process for its Capital Costs. Developer will propose specific Project Payment Sources for the requested payment and submit the Payment Request to the Chief Harbor Engineer.

(b) Approval of Payment Requests. After determining that a Payment Request is complete, the Chief Harbor Engineer must arrange for each applicable Other Acquiring Agency to inspect and approve the Phase Improvements and Components covered by the Payment Request. Based on inspection results, the Chief Harbor Engineer will approve or disapprove the Payment Request within 30 days after his completeness determination and forward any Approved Payment Request promptly to the Port Finance Director for payment instructions.

(c) Failure to Approve. As specified in the form of Payment Request, if the Chief Harbor Engineer has not approved or disapproved the Payment Request in 30 days after his completeness determination, it will be deemed approved under the Acquisition Agreement. If the Chief Harbor Engineer has not approved or disapproved a Payment Request or forwarded an Approved Payment Request to the Port Finance Director in the 30-day approval period, Developer will be entitled to submit a copy to the Port Finance Director with proof of delivery to the Chief Harbor Engineer. [Discuss adding email notice requirement]

(d) Directions to Disburse. The Port Finance Director will confirm the amount of funds available from each Project Payment Source, whether or not specified in the Approved Payment Request. Subject to limitations under Governing Law and Policy and any priorities established in this Financing Plan, the Port Finance Director will then enter the exact amounts to be applied from each Project Payment Source (other than daily

accrual of Developer Return, which will be paid subject to the Interest Cost Limitation from available sources) to honor the Approved Payment Request. The Port Finance Director will direct disbursements by providing copies as appropriate to the Escrow Agent, the Indenture Trustee, and the Special Fund Trustee, with copies to Developer, the CFD Agent, and the IFD Agent if applicable for their files.

(e) When Payment Requests Are Not Required. Notwithstanding anything herein to the contrary, a Payment Request shall not be required for (i) distributions to the Developer or Port of Project Surplus, (ii) the disbursement of funds to the Developer or Port from the Revenue Account, or (iii) distributions to the Developer or Port from a Hybrid Lease.

### **2.3. Entitlement Costs.**

(a) Entitlement Cost Statement.

(i) Up to the Reference Date, Developer spent Developer Capital on Entitlement Costs. Developer Return on Developer's Entitlement Costs began to accrue on the later of July 12, 2011, or the date on which Developer incurred the costs. Developer's Preliminary Entitlement Cost Statement is attached as **FP Schedule 3** showing Developer's line item breakdown of: (1) Entitlement Costs; and (2) Developer Return accrued on each line item of Entitlement Costs for the period ending about 90 days before the Reference Date, with estimates up to the Reference Date.

(ii) Developer must provide its updated Entitlement Cost Statement to the Port for review no later than 90 days after the Reference Date. The Port will be obligated to pay the amount of the Entitlement Sum reflected in the final, reviewed and approved Entitlement Cost Statement under this Section, subject to **Subsection 2.3(b)** (Project Payment Sources for Entitlement Costs).

(iii) Developer Return will accrue on the unpaid balance of the Entitlement Sum from the Reference Date until the date received by the Developer.

(b) Project Payment Sources for Entitlement Costs.

(i) IFD Law imposes the Interest Cost Limitation on the use of Tax Increment that also applies to any Bonds secured and payable by Tax Increment.

(ii) The Interest Cost Limitation does not apply to Land Proceeds, Mello-Roos Taxes, and Mello-Roos-only Bond Proceeds. The Port will apply Advances of Land Proceeds, Improvement Special Taxes from the Pier 70 CFDs (including amounts in the Shoreline Reserve Account), and Mello-Roos-only Bond Proceeds to pay Excess Return until paid in full before applying those sources to any other part of the Entitlement Sum.

(c) Payment Process.

(i) As described in **Section 2.2** (Payment Process Generally), Developer must submit to the Port a completed Payment Request under the Acquisition Agreement to initiate the payment process for the Entitlement Sum. The Approved Payment Request, as verified by the Port Finance Director, will direct the Escrow Agent to make an Advance of Land Proceeds to the Pier 70 CFDs by disbursing Parcel K North Proceeds to Developer unless **clause (iv)** of **Subsection 7.4(a)** (Parcel K North) applies.

(ii) The amount of the disbursement will be the lesser of: (1) Parcel K North Proceeds; and (2) the outstanding Developer Balance. Any Parcel K North

Proceeds in excess of the Developer Balance will be deposited into the Land Proceeds Fund for application to Capital Costs.

(iii) Concurrently with the disbursement under this Subsection, the Port will enter the date of its Advance and the amounts applied to Entitlement Costs and Allowed Developer Return on the allonge to Promissory Note-LP. The Port will also enter the amount applied to Excess Return on the allonge to Promissory Note-X.

(iv) If the Entitlement Sum is not fully paid by the disbursement under this Subsection, the Port will provide a copy of the Approved Payment Request to the Special Fund Trustee and the Indenture Trustee. The Approved Payment Request will authorize disbursements of Improvement Special Taxes and Mello-Roos Bond Proceeds to Developer, subject to the Interest Cost Limitation if applicable, as those funds become available up to the unpaid balance of the Entitlement Sum and accrued Developer Return until paid.

(v) If the Entitlement Sum is not fully paid by Pier 70 CFD Proceeds, the Approved Payment Request will serve as instructions to the Special Fund Trustee to disburse other Project Payment Sources for the unpaid balance to Developer as they become available, subject to the Interest Cost Limitation if applicable. Under the Special Fund Administration Agreement, the Special Fund Trustee will record the dates and amounts of each disbursement and the account from which each disbursement is made.

(vi) In the alternative, if the Entitlement Sum is not fully paid by Pier 70 CFD Proceeds, the Port will have the right, but will in no event be obligated, to make a Port Capital Advance to the Pier 70 CFDs to pay any remaining balance. If the Port does so, the Port will make a contemporaneous entry on the allonge to Promissory Note-PC that specifies the date of the Advance and the amounts applied to the Entitlement Sum, Allowed Developer Return, and Excess Return. The Port will also make corresponding entries on the Port Capital Schedule.

(vii) Contemporaneously with each disbursement under this Section, Developer will make corresponding entries on the Developer Capital Schedule.

#### **2.4. Horizontal Development Costs.**

(a) Allocation of Developer's Costs. To comply with the Tax Code relating to tax-exempt debt, the Parties are allocating Developer's Horizontal Development Costs between those eligible for reimbursement from tax-exempt sources and those that must be paid from other sources. Examples of the Parties' preliminary conclusions follow.

(i) Costs to demolish existing structures to clear the 28-Acre Site for horizontal development would be eligible for tax-exempt financing.

(ii) Costs of Utility Infrastructure, Public ROWs, Public Spaces, Transportation Infrastructure, Shoreline Improvements, and Shoreline Adaptation Studies would be eligible for tax-exempt financing.

(iii) Because Entitlement Costs and Site Preparation Costs supporting vertical development, if any, may not be eligible for financing under CFD Law, IFD Law, or IRFD Law, or if eligible under those laws, may not be eligible for tax-exempt financing under the Tax Code, the Parties will work with the City's bond counsel to determine eligibility prior to the issuance of Bonds.



(b) Developer Cash Flow in each Quarter.

(i) Developer will account for its use of Developer Capital in each Developer Quarterly Report, which must update Developer's spending on Phase Improvement Costs by Phase and provide prior notice when Developer expects Phase Improvement Costs to reach or exceed the applicable Phase Budget.

(ii) Developer must record its use of Developer Capital for Phase Improvement Costs on the Developer Capital Schedule, which must be updated and attached to each Developer Quarterly Report. Developer must record promptly on the Developer Capital Schedule, on the date received, each receipt of funds from a Project Payment Source applied to the Developer Balance.

(c) Payments from Project Payment Sources.

(i) As described in **Section 2.2** (Payment Process Generally), Developer must submit to the Port from time to time a completed Payment Request under AA § 4.2 (*Processing Payment Requests*) to initiate the payment process for the Developer Balance.

(ii) The Port Finance Director will review each Approved Payment Request delivered by the Chief Harbor Engineer under **Subsection 2.2(b)** (Approval of Payment Requests) or Developer under **Subsection 2.2(c)** (Failure to Approve) and:

(1) identify costs that are subject to restrictions under this Financing Plan or Governing Law and Policy;

(2) indicate the amounts available from each Project Payment Source under AA § 4.3 (*Processing Payments*);

(3) specify any priorities among Project Payment Sources under this Financing Plan; and

(4) forward the Approved Payment Request, with any other documents required for approved disbursements, to the Special Fund Trustee, the Escrow Agent, or the Indenture Trustee, as applicable.

(iii) The Joint Escrow Instructions will instruct the Escrow Agent to make progress payments to Developer on behalf of the Acquiring Agencies as directed in each Approved Payment Request. Each disbursement from Escrow will be an Advance of Land Proceeds to pay for Developer Improvements or Components under the Acquisition Agreement. For each disbursement, the Port will make contemporaneous entries on the allonge to Promissory Note-LP that specify the date, amount, and application of funds and on the allonge to Promissory Note-X that specify the date and amount applied to Excess Return. Each Port entry must conform to the Approved Payment Request.

(iv) The Special Fund Administration Agreement will authorize the Special Fund Trustee to make progress payments to Developer on behalf of the Acquiring Agencies to the extent directed in Approved Payment Requests. The Special Fund Trustee will disburse Project Tax Revenues when available to honor Approved Payment Requests in the order submitted, subject as applicable to the Interest Cost Limitation and the priorities specified in this Financing Plan. The Special Fund Trustee will record the date, amount, and application of each disbursement.

(v) Each Indenture will authorize the Indenture Trustee to make progress payments to Developer on behalf of the Acquiring Agencies as directed in each Approved Payment Request. The Indenture Trustee will disburse

available Bond Proceeds to honor Approved Payment Requests in the order submitted, subject as applicable to the Interest Cost Limitation, the priorities specified in this Financing Plan, and the Indenture. The Indenture Trustee will record the date, amount, and application of each disbursement and comply with other record-keeping requirements of the Indenture.

**(d)** Priorities for Payment.

**(i)** Payment Requests will have priority in the order approved, subject as applicable to the Interest Cost Limitation and the priorities specified in this Financing Plan. The Port will provide instructions for Advances of Land Proceeds and Public Financing Sources from each Current Phase to be disbursed as funds become available.

**(ii)** Payment of the Entitlement Sum and Developer Return on the Entitlement Sum from the Reference Date until paid, as described in **Section 2.3** (Entitlement Costs), will be the first priority for application of all Project Payment Sources.

**(iii)** The Entitlement Sum and accrued Developer Return will be paid before Horizontal Development Costs of Phase 1.

**(iv)** The Historic Building Feasibility Gap for Historic Building 12 and for Historic Building 21 will be paid at the time and in the manner set forth in **Article 11** (Historic Buildings).

**(v)** Horizontal Development Costs of a Current Phase will be paid before Horizontal Development Costs of a Later Phase.

**(vi)** Whenever the Port has committed to use Port Capital under **Section 7.5** (Port Capital Advances), any pre-existing Developer Balance must be paid before making an Advance of Port Capital. An Advance of Port Capital may be used to pay the pre-existing Developer Balance.

**(vii)** After the Port makes a Port Capital Advance, Project Payment Sources will be applied to the Developer Balance and the Port Balance by pro rata payments as described in **Subsection 2.4(e)** (Pro Rata Payments).

**(viii)** To the extent that a Developer Balance and a Port Balance are not satisfied by Project Payment Sources available during a Current Phase, the priorities for paying each Party's balance will be preserved by the previously Approved Payment Request.

**(ix)** After the Developer Balance and the Port Balance are satisfied, the Interim Satisfaction Balance in a Current Phase will be available for revenue-sharing if the conditions specified in **Section 3.6** (Interim Satisfaction) are satisfied.

**(x)** After the Project Payment Obligation is satisfied in full, the Pier 70 CFDs and the Pier 70 IFDs (due to their pledge of Project Tax Increment to debt of the Pier 70 CFDs) will make payments on Promissory Note-LP until fully paid as described in **Subsection 7.6(c)** (Promissory Note-LP).

**(xi)** After Promissory Note-LP is paid in full, the Pier 70 CFDs will pay Promissory Note-X.

(e) Pro Rata Payments. Whenever payment obligations under this Financing Plan include both a Developer Balance and Port Balance, those obligations will be paid pro rata, based on proportionate values of the Developer Balance and the Port Balance. Funds will be applied to any outstanding accrued return on capital before application to the capital balances. Sample calculations for pro rata application of funds to a Developer Balance and a Port Balance are shown in **FP Schedule 5**.

**2.5. Trust Account for Special Funds.** The Port, in its proprietary capacity and as CFD Agent, IFD Agent, and IRFD Agent, has entered or will enter into a Special Fund Administration Agreement with the Special Fund Trustee in the form attached as **FP Exhibit B** (Form of Special Fund Administration Agreement), under which the Special Fund Trustee will hold and administer in a Special Fund Trust Account segregated accounts described in **Article 3** (Land Proceeds), **Article 4** (Mello-Roos Taxes), **Article 6** (Tax Increment), and **Article 12** (Affordable Housing). All trust accounts that the Special Fund Trustee is expected to hold and administer are listed on **FP Schedule 4** without prejudice to the Port's right as agent of the financing districts to combine accounts, close accounts, or add additional trust accounts to facilitate implementation of this Financing Plan.

### **2.6. Special Facility Designation.**

(a) Port Revenue Bonds. The Port previously issued Port Revenue Bonds secured and payable by a pledge of Port revenues under the Port Master Indenture. As defined in the Port Master Indenture, pledged Port revenues specifically exclude revenues pledged to repay financing for public facilities that have been designated by the Port as "Special Facilities."

(b) Designation and Effect. The Port hereby designates the SUD as a Special Facility and declares revenues from and with respect to the SUD, including Land Proceeds and Project Surplus, to be Special Facility Revenue pledged to pay Special Facility Revenue Bonds. As a result, the Port revenues from and with respect to the SUD are not "Revenue" subject to and as defined in the Port Master Indenture.

## **3. LAND PROCEEDS**

**3.1. Use of Land Proceeds.** Developer and the Port agree to the uses of Land Proceeds described below.

(a) Horizontal Development Costs. The Port will use Advances of Land Proceeds from Option Parcels as those funds become available to pay the Developer Balance and any Port Balance as specified in this Financing Plan. The Port may also use Advances of Land Proceeds to pay directly for Horizontal Development Costs.

(b) Deferred Infrastructure. Subject to each applicable Acquiring Party's prior approval, when the Port conveys an Option Parcel to a Vertical Developer, the Vertical Cooperation Agreement and the Vertical DDA will: (1) identify any Deferred Infrastructure to be constructed by the Vertical Developer; (2) obligate the Vertical Developer to construct any permitted Deferred Infrastructure; and (3) attach Developer's consent, in which Developer agrees to reimburse the Vertical Developer for its Deferred Infrastructure costs. Developer's payment will be treated as reimbursable Developer Capital, which will accrue Developer Return from the date that such costs are reimbursed to the Vertical Developer to the date such costs are paid to the Developer.

(c) 20<sup>th</sup>/Illinois Plaza.

(i) The Port's offering document for Parcel K North will require the Vertical Developer to build the 20<sup>th</sup>/Illinois Plaza as a public benefit of the development project. The Port will specify an estimate of the cost to construct the 20<sup>th</sup>/Illinois Plaza based on third-party cost estimates.

(ii) The 20<sup>th</sup>/Illinois Plaza offset will be deemed to have been deducted from the Parcel K North Proceeds. The Port will instruct the Escrow Agent to disburse the Parcel K North Proceeds to Developer in accordance with **Section 2.3** (Entitlement Costs).

(iii) The initial amount of the Advance of Land Proceeds will be the sum of Parcel K North Proceeds and the 20<sup>th</sup>/Illinois Plaza offset, subject to true-up. The Port will enter the disbursement date, amount, and application of funds on the allonges to Promissory Note-LP and Promissory Note-X as applicable. Each Port entry must conform to the Approved Payment Request.

(iv) The Vertical Developer will be required to provide evidence of its actual costs to build the 20<sup>th</sup>/Illinois Plaza to the Port. The Port will revise its entries on the allonges to Promissory Note-LP and Promissory Note-X accordingly. The entries will date back to the date on which Parcel K North Proceeds were disbursed from Escrow.

(v) The Port may elect to require the Parcel K North Vertical Developer to build the Michigan Street segment also. If so, the offering document will specify that the Vertical Developer will be the Port's fee developer for the Michigan Street segment subject to public works contracting requirements, and the Port will agree to pay the Vertical Developer's costs to build the Michigan Street segment using Pier 70 Condo CFD Proceeds. Under this payment structure, the Port will not be making an Advance of Land Proceeds.

(d) Hoedown Yard Improvements.

(i) Assuming that the City exercises or publicly offers its purchase option for the Hoedown Yard, the Port will work with the City on its offering document. At the City's election, the offering document may require the Hoedown Yard Vertical Developer to build Irish Hill Park. Subject to a City-approved budget, the City and the Port will agree to pay the Vertical Developer's costs with Hoedown Yard CFD Proceeds to the extent available.

(ii) The offering document will also specify whether construction of Irish Hill Park will be a public works project that the City will fund directly with Hoedown Yard CFD Proceeds, or whether the Vertical Developer will pay the cost to build Irish Hill Park conditioned on reimbursement from Hoedown Yard CFD Proceeds to the extent available.

### **3.2. Special Fund for Land Proceeds.**

(a) Land Proceeds Fund. The Port has entered into the Special Fund Administration Agreement with the Special Fund Trustee specifying the Special Fund Trustee's duties to hold and administer the Land Proceeds Fund in accordance with this Financing Plan. In the Land Proceeds Fund, the Revenue Account has been created as a subaccount. The Special Fund Trustee's principal duties for the Land Proceeds Fund and the Revenue Account are described in this Article.

(b) Interim Satisfaction. At any time when the Project Payment Obligation for a Phase is satisfied, but the other conditions to Interim Satisfaction under **Subsection 3.6(b)** (Interim Satisfaction Event at Closing) have not been met, Land Proceeds will be deposited into the Land Proceeds Fund and be available for Capital Costs until Interim Satisfaction occurs. If all of the conditions under **Subsection 3.6(b)** (Interim Satisfaction Event at Closing) have been met, Land Proceeds will be deposited into, or transferred to, the Revenue Account for revenue-sharing. Funds deposited in the Revenue Account will be immediately disbursed to the Developer in the Developer Share and to the Port in the Port Share.

(c) Revenue Sharing. All other funds deposited in the Revenue Account under this Financing Plan will be immediately disbursed to the Developer in the Developer Share and to the Port in the Port Share.

(d) Character of Distributed Land Proceeds.

(i) The Developer Share of the Interim Satisfaction Balance distributed to Developer will not be subject to any obligation for Developer to reinvest the funds in Horizontal Development Costs or other restrictions on use under this Financing Plan.

(ii) The Port Share of the Interim Satisfaction Balance distributed to the Port will not be subject to any obligation for the Port to reinvest the funds in Horizontal Development Costs or other restrictions on use under this Financing Plan unless the Port committed to do so in a Phase Budget.

**3.3. Right to Credit Bid.** Under *DDA art. 7 (Parcel Conveyances)*, Developer, through its Vertical Developer Affiliates, has the right to tender a Credit Bid instead of cash for some or all of the Prepaid Rent or purchase price of each Option Parcel, subject to the Port's rights following a Subordination Event. Under this Section, the permitted amount of any Credit Bid will be applied automatically to a Vertical Developer Affiliate's purchase or ground lease of an Option Parcel.

(a) Calculation of Price. The price that a Vertical Developer Affiliate will be required to pay for Closing any Port conveyance of an Option Parcel will be as set forth in *DDA art. 7 (Parcel Conveyances)*.

(b) Public Financing Sources. Before the Credit Bid Determination Date, the Port will provide to Developer an update on Public Financing Sources that will be available to pay directly for Phase Improvements. The Parties will assume that the available Public Financing Sources, in addition to the Advance of Land Proceeds from the conveyance, would be used to directly pay for Horizontal Development Costs of Phase Improvements before Developer Capital or Port Capital is used.

(c) Estimated Balance Owning.

(i) Developer will provide an estimate of the Developer Balance as of the Closing Deadline. The Port will provide an estimate of the Port Balance as of the Closing Deadline. The Parties must exchange this information and daily accrual rates by the Credit Bid Determination Date.

(ii) The Parties will assume that Developer will spend Developer Capital on Phase Improvements on projected spending dates occurring before the Closing Deadline to the extent not paid directly by Public Financing Sources or Land Proceeds. Estimated costs that Developer does not have under contract will not be considered for this purpose.

(iii) The Parties will assume that the Port will make one or more Port Capital Advances to pay for Phase Improvements as specified in any Port commitment to do so under **Section 7.5** (Port Capital Advances).

(iv) If no Port Balance will be outstanding on the Credit Bid Determination Date, the amount that a Vertical Developer Affiliate may Credit Bid for the Port's conveyance of the Option Parcel will be determined under **Subsection 3.4(a)** (Developer Balance Only).

(v) If both a Developer Balance and a Port Balance will be outstanding on the Credit Bid Determination Date, the amount that a Vertical Developer Affiliate may Credit Bid for the Port's conveyance of the Option Parcel will be determined under **Subsection 3.4(b)** (Balances Owed to Both Parties).

(vi) The right to Credit Bid will not affect a Vertical Developer Affiliate's obligation to pay Developer Closing Costs in cash to Close Escrow on the Port's conveyance of an Option Parcel.

(vii) When a Vertical Developer Affiliate must pay Fair Market Value to the Port both in cash and by Credit Bid, the entire Credit Bid must be applied to the outstanding Developer Balance before the Port authorizes disbursement of Land Proceeds to Developer.

**3.4. Amount of Credit Bid.** The Parties will establish the amount of a Vertical Developer Affiliate's Credit Bid no later than the Credit Bid Determination Date as follows.

(a) Developer Balance Only. This Subsection will apply when the Project Payment Obligation consists solely of the Developer Balance. The Parties' estimates will be subject to final adjustment to confirmed figures on the Closing Date.

(i) If the estimated Developer Balance is greater than the Fair Market Value of the Option Parcel, the Credit Bid will be the full amount of the Fair Market Value. The Port, in turn, will be deemed to have received the Credit Bid in Escrow at Closing and to have instructed the Escrow Agent to disburse the amount of the Credit Bid as an Advance of Land Proceeds immediately after Closing to Developer with a corresponding reduction in the Developer Balance. Developer must enter the reduction in the Developer Capital Schedule.

(ii) If the estimated Developer Balance is less than the Fair Market Value of the Option Parcel, the following will apply.

(1) The Vertical Developer Affiliate's Credit Bid will be limited to the amount of the Developer Balance, subject to the Port's rights under **Section 3.7** (Parcel Lease Options), plus 45% of the difference between the Fair Market Value of the Option Parcel and the Developer Balance, if any. The Credit Bid will be deemed to have been delivered into Escrow and paid to the Port at the Close of Escrow.

(2) The Port, in turn, will be deemed to have instructed the Escrow Agent to disburse funds in the amount of the Credit Bid as an Advance of Land Proceeds to Developer immediately after the Port's receipt to satisfy the Developer Balance on an interim basis and reduce the Developer Capital Schedule to zero.

(3) As a condition to Closing, the Vertical Developer Affiliate will be required to deposit cash into Escrow equal to the sum of (I) 55% of the difference between Fair Market Value and the Developer Balance, plus (II) the amount of Developer Closing Costs, or as otherwise determined under **Section 3.7** (Parcel Lease Options).

(4) The Joint Escrow Instructions will direct the Escrow Agent to pay Developer Closing Costs and then to disburse the remaining cash Land Proceeds directly to the Port, or otherwise as set forth in **Section 3.7** (Parcel Lease Options).

(b) Balances Owed to Both Parties. This Subsection will apply when the Project Payment Obligation includes both a Developer Balance and a Port Balance on the Credit Bid Determination Date. The Parties' estimates will be subject to final adjustment to actual amounts on the Closing Date.

(i) If the sum of the estimated Developer Balance and Port Balance is greater than the Fair Market Value of the Option Parcel, the maximum amount of the Credit Bid will be Developer's pro rata share of the Fair Market Value,

calculated in accordance with **Subsection 2.4(e)** (Pro Rata Payments), and the Vertical Developer must pay the difference between the Credit Bid and the Fair Market Value in cash. The Port, in turn, will be deemed to have received the Credit Bid in Escrow at Closing and to have instructed the Escrow Agent to disburse the amount of the Credit Bid as an Advance of Land Proceeds immediately after Closing to Developer.

**(ii)** If the Developer Balance and the Port Balance are less than the Fair Market Value of the Option Parcel on the Credit Bid Determination Date, the following will apply.

**(1)** The Vertical Developer Affiliate's Credit Bid will be limited to the amount of the Developer Balance, plus 45% of the difference between the Fair Market Value of the Option Parcel and the total of the Developer Balance and Port Balance. The Credit Bid will be deemed delivered into Escrow and paid to the Port at the Close of Escrow.

**(2)** The Port, in turn, will be deemed to have received the Credit Bid in Escrow at Closing, and to have instructed the Escrow Agent to disburse the amount of the Credit Bid immediately after Closing to Developer to satisfy the Developer Balance and reduce the Developer Capital Schedule to zero on an interim basis.

**(3)** As a condition to Closing, the Vertical Developer Affiliate will be required to deposit cash into Escrow equal to the sum of (I) the Port Balance, (II) 55% of the difference between Fair Market Value of the Option Parcel and total of the Developer Balance and Port Balance, plus (III) the amount of Developer Closing Costs, or as otherwise determined under **Section 3.7** (Parcel Lease Options).

**(4)** The Joint Escrow Instructions will direct the Escrow Agent to pay Developer Closing Costs and disburse to the Port the remaining Land Proceeds, or otherwise as set forth in **Section 3.7** (Parcel Lease Options).

**(iii)** Developer must enter all cash and Credit Bids applied to the Developer Balance in the Developer Capital Schedule. The Port must enter all cash applied to the Port Balance in the Port Capital Schedule..

**(c)** Priorities for Payment. The application of funds according to the priorities above is shown in the illustrative examples in **FP Schedule 5** (Sample Credit Bid Calculations), assuming the Port conveys an Option Parcel to a Vertical Developer Affiliate by Prepaid Lease at Fair Market Value.

### **3.5. Treatment of Third-Party Payments.**

**(a)** Escrow. Unless the Port has made a Parcel Lease Election under **Section 3.7** (Parcel Lease Options), any Unrelated Vertical Developer that ground leases or buys an Option Parcel must deposit cash into Escrow equal to the sum of Fair Market Value and Developer Closing Costs. The Joint Escrow Instructions will direct the Escrow Agent to obtain demands for the Developer Balance and the Port Balance as of the Closing Deadline with daily accrual rates, subject to verification.

**(b)** Disbursements. Subject to **Section 3.7** (Parcel Lease Options), the Port will direct the Escrow Agent to disburse funds from the Escrow Account at the Close of Escrow for the following purposes and in the following order:

**(i)** to pay Developer Closing Costs;

(ii) to pay any remaining balance of the Entitlement Sum and accrued Developer Return by an Advance of Land Proceeds;

(iii) to pay Developer Return on the remaining Developer Balance and, if applicable, Return on Port Capital according to **Subsection 2.4(e)** (Pro Rata Payments) by an Advance of Land Proceeds;

(iv) to pay any balance of unreimbursed Developer Capital and unreimbursed Port Capital according to **Subsection 2.4(e)** (Pro Rata Payments) by an Advance of Land Proceeds; and

(v) to disburse any remaining Land Proceeds to the Special Fund Trustee for deposit in the Revenue Account of the Land Proceeds Fund.

### **3.6. Interim Satisfaction.**

(a) Effect of Breach. This Section will not apply at any time when a potential breach or an uncured Event of Default by Developer exists.

(b) Interim Satisfaction Event at Closing. An Interim Satisfaction Event will occur by operation of this Financing Plan only when the Land Proceeds from the conveyance would be sufficient to:

(i) satisfy the Developer Balance in full in cash or by Credit Bid;

(ii) satisfy the Port Balance in full in cash; and

(iii) pay Phase Improvement costs under existing contracts that are anticipated to be payable before the Closing Deadline.

(c) Distribution of Interim Satisfaction Balance from Escrow. If the Port is conveying the Option Parcel in fee, the Port will instruct the Escrow Agent to disburse the Developer Share and the Port Share of the Interim Satisfaction Balance from Escrow to the Special Fund Trustee for deposit in the Revenue Account of the Land Proceeds Fund. If the Port is conveying the Option Parcel by Parcel Lease, **Section 3.7** (Parcel Lease Options) will apply.

### **3.7. Parcel Lease Options.**

(a) Port Election. Interim Satisfaction will give rise to the Port's right to elect one of the Parcel Lease options under this Section. At Interim Satisfaction, the Port must provide a notice of Parcel Lease Election to Developer no later than 10 days after the appraisal of the Option Parcel becomes final under *DDA § 7.3 (Option Parcel Appraisals)*.

(b) Hybrid Lease. If the notice of Parcel Lease Election states that the Port elects to convey the Option Parcel by Hybrid Lease, the Port will require the Vertical Developer to enter into a Hybrid Lease for the Option Parcel. Under a Hybrid Lease, the Interim Satisfaction Balance will be distributed for revenue-sharing as described in this Subsection.

(i) The Port will direct the Escrow Agent, the Special Fund Trustee, and the Indenture Trustee as applicable to disburse available Public Financing Sources and the Advance of Land Proceeds needed to pay off the Developer Balance and the Port Balance and to pay directly any Horizontal Development Costs that are under contract and expected to be payable before the Closing Deadline.

(ii) Under a Hybrid Lease, the remaining Land Proceeds will be the Interim Satisfaction Balance available for revenue-sharing as follows.



(1) The Developer Share of the Interim Satisfaction Balance will be disbursed from Escrow directly to Developer.

(2) The Port Share of the Interim Satisfaction Balance will be paid to the Port as Annual Ground Rent. Annual Ground Rent will be calculated by applying the Rent Conversion Factor to the Port Share of the Interim Satisfaction Balance, with the first installment paid at the Close of Escrow.

(3) For example, if the Interim Satisfaction Balance were \$10 million, Developer would receive Prepaid Rent of \$4.5 million in a lump sum in cash or by Credit Bid, and the Port would receive the first of 99 installments of Annual Ground Rent in cash at the Close of Escrow, calculated by the formula: \$5.5 million x Rent Conversion Factor.

(iii) The Joint Escrow Instructions will direct the Escrow Agent to obtain demands for payment of the Developer Balance from Developer and for payment of the Port Balance from the Port, with each Party's demand subject to verification by the other Party, and for Closing only after the Vertical Developer has deposited required funds into Escrow.

(iv) The Joint Escrow Instructions will direct the Escrow Agent to disburse funds from Escrow in the following order and amounts:

(1) to the Escrow Agent, the Developer Closing Costs;

(2) to Developer, an Advance of Land Proceeds equal to the remaining balance of the Entitlement Sum and accrued Developer Return in cash or by Credit Bid, as applicable;

(3) the amount of the Developer Balance to Developer by an Advance of Land Proceeds in cash or by Credit Bid, as applicable, and the amount of the Port Balance to the Port by an Advance of Land Proceeds in cash; and

(4) the Developer Share of the Interim Satisfaction Balance in cash or by Credit Bid to Developer and the first installment of Annual Ground Rent due under the Hybrid Lease in cash to the Port.

(c) Prepaid Lease. If the notice of Parcel Lease Election states that the Port elects to convey the Option Parcel by Prepaid Lease, the Joint Escrow Instructions for the Prepaid Lease will direct the Escrow Agent to disburse Land Proceeds from Escrow in the following order and amounts:

(i) to the Escrow Agent, the Developer Closing Costs;

(ii) to Developer, the remaining balance of the Entitlement Sum and accrued Developer Return by an Advance of Land Proceeds in cash or by Credit Bid, as applicable;

(iii) the Developer Balance to Developer by an Advance of Land Proceeds in cash or by Credit Bid, as applicable, and the Port Balance to the Port by and Advance of Land Proceeds in cash; and

(iv) the Developer Share of the Interim Satisfaction Balance in cash or by Credit Bid to Developer, and the Port Share in cash to the Port.

(d) Developer Election. Developer will have right to elect to be paid Annual Ground Rent on the same conditions under which the Port can elect to receive Annual Ground Rent. Developer's election will be subject to an agreement between the Port and

Developer, under which Developer's right to receive each annual installment of Annual Ground Rent will be subordinate to the Port's receipt of Annual Ground Rent.

### **3.8. Deferred Fair Market Value Payments.**

(a) Deposits. A Vertical Developer may defer paying the entire Fair Market Value for a Commercial Parcel in the following manner. Vertical Developer Affiliates may Credit Bid amounts to be paid under this Section, subject to **Section 3.4** (Amount of Credit Bid).

(i) The Vertical Developer must make a nonrefundable deposit of 10% of the Fair Market Value of the Commercial Parcel.

(ii) No later than six months after making the initial deposit, the Vertical Developer must either:

(1) Close Escrow by paying the balance of the Fair Market Value for the Commercial Parcel; or

(2) make an additional nonrefundable deposit of 10% of the Fair Market Value of the Commercial Parcel.

(iii) The Vertical Developer must Close Escrow no later than six months after making the second deposit if it did not close under **clause (ii)**.

(b) Failure to Close or Make Deposits.

(i) If the Vertical Developer fails to take any step required by **clause (ii)** of **Subsection 3.8(a)** (Deposits), the Vertical Developer will forfeit the initial deposit and all rights to the Commercial Parcel.

(ii) If the Vertical Developer fails to timely Close Escrow under **clause (iii)** of **Subsection 3.8(a)** (Deposits), the Vertical Developer will forfeit both deposits and all rights to the Commercial Parcel.

(c) Application of Deposits. Deposits made under **Subsection 3.8(a)** (Deposits) will be nonrefundable and will be treated as Land Proceeds under **Section 3.3** (Right to Credit Bid) and **Section 3.4** (Amount of Credit Bid) if paid by a Vertical Developer Affiliate or under **Section 3.5** (Treatment of Third-Party Payments) if paid by an Unrelated Vertical Developer. The Port will take the same steps as set forth in **Subsection 3.3(c)** (Estimated Balance Owing) for determining the Developer Balance and the Port Balance by the date of the deposit.

**3.9. Reporting.** Developer Quarterly Reports must reflect the flow of all funds into and from Escrow for each Port conveyance of an Option Parcel, and the amount of Percentage Rent reported to Port under the Master Lease for the immediately prior Quarter. Each Vertical Developer Affiliate's payments to the Port must be broken down by amounts paid by Credit Bid or in cash. The Port's corresponding disbursements to Developer must also be broken down by Credit Bid and cash. Each Developer Quarterly Report must include an updated Developer Capital Schedule reflecting the Cumulative IRR and the reduction of the Developer Balance when funds are actually received or, in the case of a Credit Bid, as of the date of a deposit under **Section 3.8** (Deferred Fair Market Value Payments) or the Closing Date.

### **3.10. Distribution of Project Surplus.**

(a) Distribution of Land Proceeds after Final Audit.

(i) After the Port has accepted the Final Audit under *DDA § 20.3(b)* (Final Audit), the Parties will review the aggregate amount of the Interim Satisfaction Balance distributed from time to time. If the Final Audit shows any discrepancy between the amounts each Party actually received and its respective

revenue share, the Port will direct the Special Fund Trustee to make a disbursement from the Land Proceeds Fund as necessary to correct the discrepancy.

(ii) If no funds remain in the Land Proceeds Fund, but the Final Audit shows a discrepancy in the amounts disbursed, the Port will adjust distributions of the Project Surplus to the Port or the Developer, as applicable, to correct the discrepancy.

(iii) If no discrepancy is shown, the balance in the Land Proceeds Fund will be transferred to the Revenue Account and distributed as Project Surplus by Developer Share and Port Share.

(b) Final Distribution. After the Port has accepted the Final Audit under **Subsection 9.3(b)** (Final Audit), the Port will assign 45% of all PNLN Payments to Developer as described in **Subsection 7.6(c)** (Promissory Note-LP). Amounts payable to the Developer pursuant to the assignment of Promissory Note-LP will continue to be made in the manner set forth in this Financing Plan until the Port's revenue-sharing obligation is satisfied.

#### 4. MELLO-ROOS TAXES

##### 4.1. Purpose.

(a) City Policy. Developer acknowledges that the CFD Goals will prevail in the event of any inconsistency with this Financing Plan, except to the extent that the Board of Supervisors waives any provision of the CFD Goals in the CFD Formation Proceedings. The term sheet attached as **FP Exhibit H** outlines the principal terms that the Parties expect to be in the RMAs for the Pier 70 CFDs and the Hoedown Yard CFD.

(b) Authority for Pier 70 Leased Property CFD. Subject to Governing Law and Policy and the Pier 70 Leased Property CFD's authorized bonded indebtedness limit, when formed, the Pier 70 Leased Property CFD will be authorized to:

(i) finance all costs described in **Subsection 1.3(a)** (Pier 70 Leased Property CFD);

(ii) enter into a pledge agreement with the IFD and accept and expend Allocated Tax Increment in accordance with this Financing Plan;

(iii) incur indebtedness to repay Port Advances and sign and deliver promissory notes in favor of the Port as described in **Article 7** (Port Advances);

(iv) issue Mello-Roos Bonds through the City at the Port's request for any purpose authorized in this Financing Plan;

(v) after the Project Payment Obligation is fully satisfied, use available Project Payment Sources to pay amounts still owing under Promissory Note-LP, subject to the Interest Cost Limitation to the extent applicable;

(vi) after Promissory Note-LP is fully paid, use available Project Payment Sources to pay amounts owing under Promissory Note-X;

(vii) use Shoreline Special Taxes, amounts remaining in the Project Reserve Account and Shoreline Reserve Accounts, and Mello-Roos Bond Proceeds to pay directly for or pledge as security for Bonds to finance Pier 70 Shoreline Protection Facilities and, subject to Port Commission and Board of Supervisors approval, for other Pier 70 costs and other uses permitted under the CFD Formation Proceedings for the Pier 70 Leased Property CFD; and

(viii) use Services Special Taxes to pay Ongoing Maintenance Costs of the FC Project Area Maintained Facilities.

(c) Authority for Pier 70 Condo CFD. Subject to Governing Law and Policy and the Pier 70 Condo CFD's authorized bonded indebtedness limit, when formed, the Pier 70 Condo CFD will be authorized to:

(i) finance all costs described in **Subsection 1.3(b)** (Pier 70 Condo CFD);

(ii) issue Mello-Roos Bonds through the City at the Port's request for any purpose authorized in this Financing Plan;

(iii) use Services Special Taxes levied in Zone 1 of the Pier 70 Condo CFD to pay Ongoing Maintenance Costs of Parcel K North Maintained Facilities; and

(iv) use Services Special Taxes levied in Zone 2 of the Pier 70 Condo CFD to pay Ongoing Maintenance Costs of FC Project Area Maintained Facilities.

(d) Authority for the Hoedown Yard CFD. Subject to Governing Law and Policy and the Hoedown Yard CFD's authorized bonded indebtedness limit, when formed, the Hoedown Yard CFD will be authorized to:

(i) finance all costs described in **Subsection 1.3(c)** (Hoedown Yard CFD);

(ii) issue Mello-Roos Bonds through the City at the Port's request for any purpose authorized in this Financing Plan; and

(iii) use Services Special Taxes from the Hoedown Yard CFD to pay Ongoing Maintenance Costs of Hoedown Yard Maintained Facilities.

**4.2. City Implementation.** The City has agreed to undertake the CFD Formation Proceedings for each CFD in the Tax Allocation MOU.

(a) Agreement to Form CFDs. Promptly following the recordation of a Transfer Map for the 28-Acre Site, the City will:

(i) form the Pier 70 Leased Property CFD, with special tax rates and other terms set forth in the RMA Term Sheet set forth in **FP Exhibit H** and as otherwise required by this Financing Plan or mutually agreed to by the Parties;

(ii) designate the Future Annexation Area of the Pier 70 Leased Property CFD;

(iii) form the Pier 70 Condo CFD, with special tax rates and other terms set forth in the RMA Term Sheet set forth in **FP Exhibit H** and as otherwise required by this Financing Plan or mutually agreed to by the Parties;

(iv) designate the Future Annexation Area of the Pier 70 Condo CFD; and

(v) form the Hoedown Yard CFD, with special tax rates and other terms set forth in the RMA Term Sheet set forth in **FP Exhibit H** and as otherwise required by this Financing Plan or mutually agreed to by the Parties.

(b) Agreement to Allocate Special Taxes. The City has agreed to allocate to each CFD the Mello-Roos Taxes from the CFD for use in accordance with this Financing Plan.

(c) Appointment of Port as Agent. The City will appoint the Port as CFD Agent to take all authorized actions on behalf of each CFD, including:

(i) directing the Special Fund Trustee to disburse Mello-Roos Taxes for the purposes specified in the applicable CFD Formation Proceedings and described in this Financing Plan;

(ii) determining in collaboration with the Public Finance Division of the Controller's Office whether and in what amounts the City will issue Bonds on behalf of each CFD;

(iii) directing the Indenture Trustees' disbursement of Mello-Roos Bond Proceeds; and

(iv) incurring and repaying indebtedness as set forth in Promissory Note-LP, Promissory Note-PC, and Promissory Note-X.

(d) CFD Reporting Requirements. The Port as CFD Agent will prepare on behalf of each CFD an annual CFD Report in compliance with California Government Code sections 50075.1(d), 50075.3(d), and 53411 for each CFD, reporting on:

(i) the amount of Mello-Roos Taxes collected and expended;

(ii) the amount of Mello-Roos Bond Proceeds collected and expended;

and

(iii) the status of the Project.

(e) Tax Allocation MOU. The Board of Supervisors has authorized the Controller, the Assessor, and the Treasurer-Tax Collector to enter into the Tax Allocation MOU with the Port under Charter section B7.320 in furtherance of the Financing Documents. For each CFD, the Board of Supervisors has authorized and directed the following actions.

(i) The Assessor will coordinate efforts with the Port and Developer to place each Development Parcel on the assessment roll as soon as practicable after its Final Map is recorded.

(ii) The Treasurer-Tax Collector will levy and collect in a segregated fund Mello-Roos Taxes from each CFD as directed by the Port as CFD Agent, to the extent consistent with the Financing Documents.

(iii) The Controller will disburse Mello-Roos Taxes from each CFD to the Special Fund Trustee.

(iv) The Port will consult with the Public Finance Division of the Controller's Office on timing, amounts, and other matters relating to Mello-Roos Bonds, and the Port, the Treasurer-Tax Collector, the Assessor, and the Controller will cooperate to implement the objectives of the Financing Documents.

**4.3. Special Fund for Special Taxes.** Under sections 50075 and 53410 of the California Government Code, Mello-Roos Taxes must be deposited into a designated account. The Port will enter into the Special Fund Administration Agreement with the Special Fund Trustee authorizing the trustee to establish segregated accounts as needed to implement this Financing Plan.

(a) Improvement Special Taxes. The authorized accounts in the Special Tax Fund for Facilities Special Taxes are anticipated to be:

(i) the Pier 70 CFD Facilities Accounts;

(ii) the Project Reserve Account;

- (iii) the Shoreline Reserve Account;
- (iv) the Arts Building Account;
- (v) the Pier 70 Condo CFD Account;
- (vi) the Hoedown Yard Facilities Account; and
- (vii) other accounts to hold funds to repay indebtedness incurred by any Facilities CFD under this Financing Plan.

(b) Shoreline Facilities Account. After the Project Payment Obligation is satisfied and Promissory Note-LP is fully paid, any funds remaining in the 28-Acre Site Facilities Account and the Project Reserve Account will be transferred to the Shoreline Reserve Account, which will become the Shoreline Facilities Account.

(c) Services Special Taxes. The authorized accounts in the Services Special Tax Fund will be:

- (i) the Pier 70 Leased Property Services Account;
- (ii) the Pier 70 Condo CFD Services Account; and
- (iii) the Hoedown Yard Services Account.

**4.4. Notice of Contract to Maintain Levy of CFD Financing.** Under Section 3 of article XIII C of the California Constitution, under certain circumstances, voters may vote to reduce or repeal the levy of special taxes in a community facilities district. Section 9 of article I of the California Constitution, however, prohibits the passage of a law resulting in an impairment of contract.

(a) Notice. This Section provides notice of the following:

(i) The DDA, including this Financing Plan, is a contract between the Port and Developer.

(ii) This Financing Plan:

(1) describes an integrated program to finance Horizontal Development Costs, 100% affordable housing in the AHP Housing Area, the Historic Building Feasibility Gap, the Arts Building Funding, Ongoing Maintenance Costs, the Pier 70 Shoreline Protection Facilities, PNL P Payments, and the CFD Administrative Costs through the application of Mello-Roos Taxes and Mello-Roos Bonds secured and payable by Facilities Special Taxes and other Special Taxes; and

(2) is an essential part of the consideration for the DDA.

(iii) Any reduction in the City's ability to levy and collect Mello-Roos Taxes on behalf of each CFD for purposes specified in this Financing Plan would materially impair Developer's and the Port's contractual rights and obligations under the DDA.

(b) Intent to Maintain Contract. To further preserve the contractual rights and obligations under the DDA, the Port agrees that the following will apply until all Mello-Roos Bonds and all other debts have been repaid in full or defeased before maturity for any reason other than a refunding.

(i) Until the Port has satisfied the Project Payment Obligation and paid Promissory Note-LP, neither the Port nor the City will initiate or conduct proceedings under CFD Law to reduce the Special Tax rates except by agreement with Developer or if legally compelled to do so (e.g., by a final judgment).

(ii) If the voters adopt an initiative ordinance under section 3 of article XIII C of the California Constitution that purports to reduce, repeal, or otherwise alter the Special Tax rates, the Port will meet and confer with Developer and the City to consider reasonable legal action to preserve the Port's ability to comply with its obligations under the DDA and this Financing Plan.

#### **4.5. RMA Generally.**

(a) Cooperation. Developer and the Port are working cooperatively to develop RMAs for each Pier 70 CFD that are consistent with this Financing Plan. Expected principal terms for each Pier 70 CFD and the Hoedown Yard CFD are shown in **FP Exhibit H.**

(b) Priority Administrative Costs. In the formation process for each CFD, the Port will estimate the amount of annual CFD Administrative Costs that will have first priority for payment by Mello-Roos Taxes based on: (i) actual administration costs of other community facilities districts in San Francisco; (ii) the CFD's complexity and size; and (iii) estimated costs of administrative services to be provided by Port and City staff and consultants.

(c) Special Tax Rates for Pier 70 Leased Property CFD. Developer and the Port agree as follows.

(i) The maximum annual Facilities Special Taxes in the RMA for the Pier 70 Leased Property CFD will be on a building square footage basis and will not exceed 80% of the anticipated average annual Project Tax Increment to be generated in the CFD. For example, if the projected average annual Project Tax Increment for Leased Parcels is \$5.00 per building square foot, then the maximum annual Facilities Special Taxes for the Pier 70 Leased Property CFD will be not higher than \$4.00 per building square foot.

(ii) In addition, the Developer and the Port acknowledge and agree that, for a Taxable Parcel, the term of the Facilities Special Taxes set forth in the RMA for the Pier 70 Leased Property CFD shall not be later than the termination date of the Tax Increment for the applicable Sub-Project Area of the IFD in which the Taxable Parcel is located.

(d) Reduction of Special Tax Rates for Pier 70 Leased Property CFD. If the City, the Port, and Developer determine, before the City issues the first series of Mello-Roos Bonds secured by Improvement Special Taxes levied in the Pier 70 Leased Property CFD, that the anticipated average annual Project Tax Increment from Taxable Parcels is less than the amount projected at formation of the CFD, then the City and Developer will (i) take the steps necessary to lower the Facilities Special Taxes in the RMA for the Pier 70 Leased Property CFD to an amount not more than 80% of the revised anticipated average annual Project Tax Increment to be generated in the CFD, and (ii) take the steps necessary to lower the Shoreline Special Taxes to reflect the decrease in assessed valuation, as set forth in the RMA.

(e) Delinquencies. Each RMA will include a provision that prohibits the City from levying Special Taxes on any Taxable Parcel due to the delinquencies in the payment of Facilities Special Taxes of other property owners in an amount greater than 10% of the applicable maximum Special Tax Rates for such Taxable Parcel.

(f) Annual Levy. After formation of the Pier 70 CFDs, the CFD Administrator will consult with Developer as needed to determine in each City Fiscal Year:

(i) what development has occurred in the prior City Fiscal Year;

- (ii) the amount of Project Tax Increment in the Tax Increment Fund;
- (iii) the amount of Housing Tax Increment in the Housing Tax Increment Fund;
- (iv) the debt service requirements for each CFD; and
- (v) the anticipated CFD Administrative Costs.

(g) Material Changes to CFD Law. If CFD Law changes to make Mello-Roos Taxes unavailable or severely impair the uses authorized by the Financing Documents, the Port and Developer in consultation with the City will negotiate in good faith to establish a substitute financing program equivalent in nature and function as allowed under then-current Governing Law and Policy.

#### **4.6. Services Special Taxes.**

(a) Authorized Costs. The RMA for each Services CFD shall authorize the City to levy Services Special Taxes annually in the amounts needed to provide a perpetual pay-as-you-go source to fund Ongoing Maintenance Costs of Maintained Facilities. Developer acknowledges that Maintained Facilities will never include private open space.

(b) No Prepayment. The RMA for each CFD will provide that taxpayers will not be allowed to prepay Services Special Taxes.

(c) Other Sources for Ongoing Maintenance Costs.

(i) Although the City and the Port will acquire all Developer Improvements from Developer under this Financing Plan, the Maintained Facilities are important to the ongoing success and identity of the Project. To protect its investment, Developer has agreed to establish a supporting framework if needed or desired to replace or supplement the Services Special Taxes, which may include assessments through one or more property owners associations, to assist in funding Ongoing Maintenance Costs if necessary.

(ii) In addition, the Port will establish maintenance obligations among all other Pier 70 tenants and property owners, as well as consenting adjacent landowners who benefit from adjacency of Maintained Facilities, to contribute their equitable shares toward Ongoing Maintenance Costs.

(d) Covenants.

(i) The Port has informed Developer that, because of limited Port revenue sources, the Port would not enter into the DDA or Financing Plan without ensuring an ongoing funding source for Ongoing Maintenance Costs.

(ii) Developer agrees to obtain Port or City, if applicable, approval of and establish maintenance covenants to be recorded in the Official Records before the Port or the City conveys any Taxable Parcel in any CFD formed in the SUD. Maintenance covenants will run with the land and be binding on successors in perpetuity.

(iii) The maintenance covenants will specify that the City, including the Port, is an intended beneficiary and obligate every owner of a Taxable Parcel to pay an amount equivalent to Services Special Taxes that would have been levied if the CFDs or their taxing powers are ever eliminated or reduced for any reason, including any vote of the qualified electors in the CFD.



#### **4.7. Reserve and Shoreline Facilities Accounts.**

(a) Funding for Reserve Accounts. The CFD Formation Proceedings will authorize the Pier 70 Leased Property CFD to assess Shoreline Special Taxes on Taxable Parcels in the Pier 70 Leased Property CFD.

(i) Shoreline Special Taxes will be levied at the times and the rates in the RMA on each Taxable Parcel in the Pier 70 Leased Property CFD.

(ii) Until the Project Payment Obligation is satisfied and Promissory Note-LP is fully repaid, Facilities Special Taxes in the account after making any payments due on a Principal Payment Date, paying priority and any other CFD Administrative Costs, and setting aside amounts needed to replenish any other reserves specified in the Special Fund Administration Agreement, will be held for authorized purposes.

(b) Division of Reserves. For each Phase, until the conditions described in Subsections (ii), (iii) or (iv) below have occurred, 75% of the Shoreline Special Taxes collected under **Subsection 4.7(a)** (Funding for Reserve Accounts) from Taxable Parcels located in that Phase of the Pier 70 Leased Property CFD will be deposited into the Project Reserve Account.

(i) If at the end of the Phase, the Phase Audit shows that the subject Phase reached Phase Satisfaction, then one-third of the Shoreline Special Taxes deposited in the Project Reserve Account on behalf of the subject Phase shall be transferred to the Shoreline Reserve Account. After such transfer, the deposit of Shoreline Special Taxes collected from Taxable Parcels located in that Phase to the Project Reserve Account shall be reduced from 75% to 50% of the Shoreline Special Taxes collected from the Taxable Parcels in the subject Phase. Amounts in the Project Reserve Account, and amounts to be thereafter deposited in, the Project Reserve Account, shall be applied, if needed, for the Next Phase.

(ii) If at the end of the Phase, the Phase Audit shows that the subject Phase did not reach Phase Satisfaction, then funds on deposit in the Project Reserve Account shall be applied in amounts required to reach Phase Satisfaction. If Phase Satisfaction is achieved by using one-third or less of the balance in the Project Reserve Account for the subject Phase, as shown in the Phase Audit, then upon achieving Phase Satisfaction, a transfer is made from the remaining amounts in the Project Reserve Account (after any expenditures for achieving Phase Satisfaction) to the Shoreline Reserve Account in an amount so that funds remaining on deposit in the Project Reserve Account from the Shoreline Special Taxes collected on behalf of the subject Phase is equal to two-thirds of the balance in the Project Reserve Account for the subject Phase as shown in the Phase Audit (i.e., before using any such funds for Phase Satisfaction). After such transfer, the deposit of Shoreline Special Taxes collected from Taxable Parcels located in that Phase to the Project Reserve Account shall be reduced from 75% to 50% of the Shoreline Special Taxes collected from the Taxable Parcels in the subject Phase. Amounts in the Project Reserve Account, and amounts to be thereafter deposited in, the Project Reserve Account, shall be applied, if needed, for the Next Phase.

(iii) If at the end of the Phase, the Phase Audit shows that the subject Phase did not reach Phase Satisfaction, then funds on deposit in the Project Reserve Account shall be applied in amounts required to reach Phase Satisfaction. If Phase Satisfaction is achieved by using more than one-third of the of the balance in the Project Reserve Account for the subject Phase, as shown in the Phase Audit, then upon achieving Phase Satisfaction, no transfers from the Project

Reserve Account to the Shoreline Reserve Account shall be made for the subject Phase. Thereafter, the deposit of Shoreline Special Taxes collected from Taxable Parcels located in that Phase to the Project Reserve Account shall be reduced from 75% to 50% of the Shoreline Special Taxes collected from the Taxable Parcels in the subject Phase. Amounts in the Project Reserve Account, and amounts to be thereafter deposited in, the Project Reserve Account, shall be applied, if needed, for the Next Phase.

(iv) If at the end of the Phase, the Phase Audit shows that the subject Phase did not reach Phase Satisfaction for that Phase and application of the funds on deposit in the Project Reserve Fund will not be sufficient to reach Phase Satisfaction for that Phase, then the following shall occur: (A) all of the funds in the Project Reserve Account shall be applied to pay the Developer Balance and the Port Balance to the extent of such funds; and (B) the remaining amount necessary to achieve Phase Satisfaction Balance shall be provided from the proceeds of Bonds issued by the Pier 70 Leased Property CFD secured by the Shoreline Special Taxes to be deposited in the Project Reserve Account for the subject Phase, which shall continue to be deposited at the rate of 75% of the Shoreline Special Taxes for the subject Phase (to service the Bonds that have been issued based on the tax stream of 75% of the Shoreline Special Taxes for the Phase). The proceeds of any such Bonds shall be used to pay the following expenses in the following order of priority: Entitlement Sum, Developer Return, and Horizontal Development Costs in the subject Phase.

(v) For each Phase, funds deposited into the Shoreline Reserve Account will be limited initially to 25% of the Shoreline Special Taxes collected under **Subsection 4.7(a)** (Funding for Reserve Accounts) from the Taxable Parcels in the subject Phase. After satisfaction of the conditions set forth in subsections (ii), (iii), or (iv) above, further deposits to the Shoreline Reserve Account will be made at 50% of the Shoreline Special Taxes collected from the Taxable Parcels in the subject Phase. If the conditions set forth in subsection (v) above apply, the amount of Shoreline Special Taxes collected from the subject Phase that are deposited in the Shoreline Reserve Account will continue to be limited to 25% of the Shoreline Special Taxes collected from the subject Phase.

(c) Project Reserve. The Project Reserve Account will be used for the following expenses, in the order of priority listed below.

- (i) Entitlement Sum and accrued Developer Return;
- (ii) other Horizontal Development Costs;
- (iii) Developer Balance and Port Balance, pro rata; and
- (iv) the Historic Building Feasibility Gap.

(d) Shoreline Reserve. The Shoreline Reserve Account will be used for the expenses listed below, subject to completion of any required environmental review under CEQA.

- (i) Shoreline Adaptation Studies;
- (ii) Shoreline Protection Facilities; and
- (iii) Pier 70 Shoreline Protection Facilities.

(e) Shoreline Facilities Account.

(i) When the Pier 70 CFD Facilities Accounts and the Project Reserve Account are each Ready for Close, all funds remaining in each account will be

transferred into the Shoreline Reserve Account and used for Pier 70 Shoreline Protection Facilities and for other Port capital facilities approved by the Port Commission and the Board of Supervisors. After the transfers, the account will be known as the Shoreline Facilities Account.

**(ii)** The RMA for the Pier 70 Leased Property CFD will provide that the CFD is authorized to continue to levy Shoreline Special Taxes in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD to fund the Shoreline Protection Project after the Port has satisfied all of its payment obligations to Developer under this Financing Plan.

**(f)** Determining Pier 70 Shoreline Protection Facilities.

**(i)** Before the anticipated date of the Final Audit, the Port will complete a technical study of the Project's shoreline protection needs to provide a commercially reasonable standard of flood protection based on then-available scientific consensus (National Research Council or Intergovernmental Panel on Climate Change) for mid-high range of projected sea-level rise for the period through the term of the Master Lease and the Parcel Leases for the 28-Acre Site with the latest expiration date.

**(ii)** The Port and Developer will review the study and agree on a commercially reasonable design for needed potential shoreline improvements to protect the 28-Acre Site from sea-level rise.

**(iii)** The Port and Developer will review and comment on designs for improvements outside of the 28-Acre Site that are needed to protect the 28-Acre Site, but the Port will have final design control and decision as long as Developer concurs that the scope will protect the 28-Acre Site.

**(iv)** The Port, in consultation with Developer, will determine the commercially reasonable costs of implementing the flood protection project to protect 28-Acre Site determined by this process, including a 100% contingency and annual escalation factors consistent with escalation used in the DDA for other costs and revenues.

**(v)** Once design is work finalized, the Port and Developer will agree on a construction schedule for the flood protection project. In accordance with this Financing Plan, the Port will fund the project with:

**(1)** Any remaining Allocated Project Tax Increment for the balance of the respective terms of the Sub-Project Areas;

**(2)** Facilities Special Taxes levied in Zone 2 of the Pier 70 Condo CFD;

**(3)** available Shoreline Special Taxes; and

**(4)** any proceeds of any Bonds secured by these sources.

**(vi)** The RMAs and Appendix G-2 will specify that the costs of these improvements will have priority over other costs that are authorized but only after all of the following are paid in full:

**(1)** the Project Payment Obligation;

**(2)** Promissory Note-LP; and

**(3)** all payment obligations to Developer under this Financing Plan.

(vii) Nothing in this Subsection will be construed to limit the ability of the Port to:

- (1) spend Shoreline Special Taxes from the Shoreline Reserve Account;
- (2) request issuance of Bonds secured by Shoreline Special Taxes on deposit in the Shoreline Reserve Account; or
- (3) spend the resulting Bond proceeds on Shoreline Protection Facilities outside of Pier 70.

#### 4.8. Shortfall Provisions.

(a) Developer Waiver and Covenant. Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of any Taxable Parcel in the SUD until the IFD Termination Date. In addition, the Developer covenants that should the Developer initiate a Reassessment on a Taxable Parcel in the SUD in violation of the waiver, and subject to Subsection 4.8(c) (Circumstances Causing Shortfall), the Developer and the Port shall take the following measures to avoid shortfalls:

(i) Developer will pay the Port the Assessment Shortfall in twenty days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(ii) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates:

- (1) the applicable IFD Termination Date; and
- (2) when the Assessment Shortfall is reduced to zero.

(b) Vertical Developer Waiver and Covenant. The Parties have agreed on forms of a Vertical DDA and Parcel Lease for Vertical Developers that include the following provisions.

(i) A waiver in which the Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of any Taxable Parcel in the SUD until the IFD Termination Date.

(ii) A covenant by the Vertical Developer that should the Vertical Developer initiate a Reassessment on a Taxable Parcel in the SUD in violation of the waiver, and subject to **Subsection 4.8(c)** (Circumstances Causing Shortfall), the Vertical Developer and the Port shall take the following measures to avoid shortfalls:

(1) Vertical Developer will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(2) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

(c) Circumstances Causing Shortfall. This Section will apply if Developer or any Vertical Developer initiates a Reassessment on a Taxable Parcel in the SUD in

violation of **Subsection 4.8(a)** (Developer Waiver and Covenant) or **Subsection 4.8(b)** (Vertical Developer Waiver and Covenant).

(d) Tax Exemption. Developer and the Port do not intend for this Section to affect the tax-exempt status of any Bonds. Should the Tax Code change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt Bonds to be deemed taxable due to the requirements under this Section, the Port will release the obligations under this Section and it will be deemed severed from this Financing Plan under *App ¶ A.4.3 (Severability)*.

(e) Mutual Expectations as to Shortfall Measures. Neither Developer nor the Port expects the Port to make demand for payment under this Section. In light of the Parties' mutual expectations, Developer has agreed to the waiver in **Subsection 4.8(a)** (Developer Waiver and Covenant) and to include waiver and covenant language in documents with Vertical Developers as described in **Subsection 4.8(b)** (Vertical Developer Waiver and Covenant).

(f) No Negotiation. Developer understands that the Port would not be willing to enter into this Financing Plan without this Section.

**4.9. Future Annexations.** For each Parcel located in the Future Annexation Area, when Developer determines whether the parcel will be developed as NOI Property or a Residential Condo Project, Developer will provide notice to the Port and the City in writing of such determination. Within 60 days after receipt of such notification, the Port and the City shall take steps necessary to: (i) annex the parcel that the Developer has determined will be developed as NOI Property to the Pier 70 Leased Property CFD; or (ii) annex the parcel that the Developer has determined will be developed as a Residential Condo Project to the Pier 70 Condo CFD. The annexation will be implemented by the Port's execution and delivery of a Unanimous Approval form and an amendment to the Notice of Special Tax Lien required by the CFD Law, without requiring any public hearing or legislative action on the part of either the Port or the City, although, at the recommendation of Bond Counsel, the Board of Supervisors may adopt a resolution confirming annexation.

**4.10. Limit on Actions.** Neither the City nor the Port will take any action under CFD Law or otherwise to do any of the following without Developer's prior written consent: (i) initiate proceedings to modify or repeal any provision of any RMA or CFD Law, the list of authorized facilities and services, the Special Tax rates, the authorized bonded indebtedness; or (ii) annex any property to any CFD except under **Section 4.9** (Future Annexations).

**4.11. Validation.** Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the CFDs and matters authorized under each RMA and this Financing Plan. Attorneys' fees associated with these validation actions will be Port Costs or City Costs that are reimbursable under **Section 9.2** (Port Accounting and Budget).

**4.12. Developer Agreement to Pay Facilities Special Taxes.** In connection with the conveyance of a Parcel within the Pier 70 Leased Property CFD to a Vertical Developer, the Developer will enter into an agreement with the Vertical Developer to reimburse to the Vertical Developer or otherwise pay the first two years' Facilities Special Tax levy, if any, on the Parcel. The Parties understand that the payment by the Developer of the Facilities Special Tax levy will be made in the amount that appears on the tax bill for the Parcel, and only to the extent of the Facilities Special Tax actually levied on the Parcel (i.e., if capitalized interest covers the payment, then the Developer shall have no obligation for that tax bill). Under no circumstances will the Developer be obligated to (i) pay Facilities Special Taxes that are levied on a Parcel that is considered Developed Property, (ii) pay any taxes other than the Facilities Special Taxes in the Pier 70 Leased Property CFD that are actually levied, (iii) pay any more than the amount set forth on the tax bill (i.e., the Developer shall pay the Facilities Special Tax

in installments just as the owner of the Parcel would otherwise be required), and (iv) pay more than two years' of Facilities Special Taxes.

## 5. MELLO-ROOS BONDS

**5.1. Legal Limitations.** The following limitations and priorities will apply to the use of Mello-Roos Bond Proceeds.

(a) Fair Market Price. To comply with CFD Law section 53313.51, the Acquisition Agreement for the Developer Improvements specifies a fair market price or method to determine a fair market price for each capital facility or discrete portion or phase of a capital facility to be acquired, including "an amount reflecting the interim cost of financing cash payments that must be made during the construction of the project."

(b) Interest Cost Limitation. Any Mello-Roos Bonds secured and payable by a pledge of Tax Increment will be subject to the Interest Cost Limitation.

### 5.2. Use of Proceeds.

(a) Priorities. Until the Project Payment Obligation is satisfied, Mello-Roos Bond Proceeds will be available only after the following are fully funded:

(i) required reserves and costs of issuance;

(ii) capitalized interest for debt service covering a period that the City will determine on a case-by-case basis, in its sole discretion, after consultation with the Port and the Developer; and

(iii) for the purposes authorized in the applicable Indenture.

(b) Payment Priorities. The priorities under **Subsection 2.4(d)** (Priorities for Payment) will apply to all Mello-Roos Bond Proceeds except as limited by Governing Law and Policy, this Financing Plan, and the CFD Formation Proceedings. After satisfying the obligations under **Subsection 2.4(d)** (Priorities for Payment), the Port may use Mello-Roos Bond Proceeds for any other eligible use consistent with applicable Indentures and the CFD Formation Proceedings.

(c) Financing Temporarily Excused. The City will not be obligated to issue any Mello-Roos Bonds under this Financing Plan at any time during which:

(i) Developer or any Vertical Developer Affiliate is in default in the payment of any ad valorem tax or Mello-Roos Taxes levied on any Taxable Parcel in a Sub-Project Area or the Pier 70 Leased Property CFD;

(ii) the Port has declared Developer to be in Material Breach of the DDA;

(iii) the Port has declared any Vertical Developer Affiliate to be in breach of its conveyance agreement provisions incorporating specified DDA obligations;

(iv) the Port or the City, each in its sole judgment in light of the Funding Goals and advice from staff and consultants, finds that market conditions, or conditions affecting the property in the Project (such as tax delinquencies, assessment appeals, damage or destruction of improvements, or litigation), make it fiscally imprudent or infeasible to issue Mello-Roos Bonds; or

(v) the underwriter exercises any right to cancel its obligation to purchase Mello-Roos Bonds during the occurrence and continuation of events specified in its bond purchase agreement with the City.

### 5.3. Issuance.

(a) Financing Assumptions. The Port will ask the City to issue Mello-Roos Bonds secured and payable by Improvement Special Taxes in accordance with assumptions in approved Phase Budgets, unless the Port determines that the assessed or appraised value of the applicable Taxable Parcels and the financing do not meet the minimum requirements in the CFD Goals. This Financing Plan is based on certain assumptions regarding Mello-Roos Bonds for the Project, summarized below.

(i) Special Debt Service on Mello-Roos Bonds issued will be secured and paid in part by Project Tax Increment as described in **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment).

(ii) The City may issue Mello-Roos-only Bonds secured and payable by Improvement Special Taxes, but not Tax Increment, to finance Excess Return.

(b) Meet and Confer.

(i) Developer will have the right to request through the Port that the City issue Mello-Roos Bonds. The City and the Port agree to meet and confer with Developer regarding its request.

(ii) Before the Port makes any request for the City to sell Mello-Roos Bonds, Port and City staff and consultants will meet and confer with Developer to discuss the terms of the proposed bond issue. The Port and the City in consultation with the Port's financing consultants will retain discretion to determine reasonable and appropriate issuance dates, principal amounts, and primary financing terms in light of the purpose of the financing, the CFD Goals, and the Port IFD Guidelines if applicable.

(c) Consistency with CFD Goals. Mello-Roos Bonds will be issued at the times, in the manner, and in the amounts that are consistent with the requirements set forth in the applicable Indenture and the CFD Goals.

(d) Payment of Debt Service in the Event of Delinquencies. If delinquencies in the payment of Improvement Special Taxes securing Mello-Roos Bonds results in an insufficient amount to pay the debt service on the applicable Mello-Roos Bonds, the CFD will use funds in the following order of priority to cover the shortfall:

(i) a draw on the debt service reserve held under the applicable Indenture; and

(ii) at the at the Port's sole option, an Advance of Port Capital.

(e) Collection of Delinquencies. If delinquent Improvement Special Taxes are collected, they will be applied with regard to the applicable Mello-Roos Bonds in the following order of priority:

(i) for debt service on the applicable Mello-Roos Bonds, if required;

(ii) to replenish the applicable debt service reserve held under the applicable Indenture; and

(iii) Reimbursement of any Port Capital advanced.

(f) Credit Enhancement.

(i) If the bond underwriter requires or recommends security to enhance the marketability of any Bonds or provide better terms, the Parties will cooperate to determine the form of security that would provide the greatest financial benefit to the Project. Measures may include designating a portion of

Mello-Roos Bond Proceeds to fund capitalized interest, a letter of credit in the amount of a specified period of debt service, and a guaranty.

(ii) Neither Party will be required to provide credit enhancement, but a Party choosing to do so will be entitled to reimbursement of associated ancillary costs, such as issuance and annual fees, which will be treated as Developer Capital or Port Capital, as applicable.

(g) Tax-Exempt or Taxable. Developer and the Port agree to cooperate to maximize the tax-exempt treatment of any Mello-Roos Bonds that the City issues, subject to the following.

(i) The Port and the City, after consultation with the Developer, will determine whether Bonds should be taxable or tax-exempt. Bond tax counsel for the Port or the City, or both, will evaluate each proposed use of tax-exempt Bonds for the possibility of meeting the private use test (such as reserved parking spaces, management agreements longer than five years, etc.), the private payment test (as a result of revenue-sharing, transfer fees, Port participation in ground leases, etc.), and the private loan test under the Tax Code.

(ii) Bond tax counsel for a planned Bond issue for the Project will determine whether all planned uses of the proceeds will qualify for tax-exempt treatment under the Tax Code.

#### **5.4. Bond Indenture.**

(a) Covenant to Foreclose. The Port will cause the City to covenant with Mello-Roos Bond bondholders to foreclose any lien of delinquent Improvement Special Taxes consistent with CFD Law, the general practice for community facilities districts in California, and otherwise as determined by the City in consultation with its underwriter or financial advisor for the Mello-Roos Bonds and other consultants.

(b) Reserve Fund Earnings. The Indenture for each issue of Mello-Roos Bonds will provide that earnings on any reserve fund that are not then needed to replenish the reserve fund to the reserve requirement will be transferred: (i) to the applicable Mello-Roos Improvement Fund for allowed uses until it is closed in accordance with the Indenture; and (ii) after the fund is closed, to the debt service fund held under the Indenture.

(c) Continuing Disclosure. Developer agrees to execute a continuing disclosure agreement if requested by an underwriter of Mello-Roos Bonds or any other financing consultant for the bonds. Developer must comply with all obligations under any continuing disclosure agreement that it executes in connection with the offering and sale of any Mello-Roos Bonds.

(d) No Recourse to General Fund or Harbor Fund. Under no circumstances will any bondholder of Mello-Roos Bonds issued under this Financing Plan have recourse to either the City General Fund or the Port Harbor Fund.

#### **5.5. Mello-Roos Bonds for Phases.**

(a) Intent to Issue Early Bonds.

(i) Under this Financing Plan, the Port will seek Board of Supervisors approval for the City to issue Early Mello-Roos Bonds as soon as feasible after formation of each CFD, the Reference Date, and the approval of each Later Phase, subject to **Subsection 5.3(a)** (Financing Assumptions). Port requests will also be timed to coordinate with each Phase Budget.



(ii) The Port will size each issue of Early Mello-Roos Bonds by the applicable Improvement Special Taxes and the Taxable Parcels to be taxed, value-to-lien limitations, and underwriter requirements. Although the Port intends to issue Early Mello-Roos Bonds, it reserves the right to refrain from requesting issuance during the pendency of any of the circumstances described in **Subsection 5.2(c)** (Financing Temporarily Excused).

(b) Phase 1. Phase 1 Early Mello-Roos Bonds will be secured and payable by a pledge of Facilities Special Taxes from the Pier 70 Leased Property CFD and Project Tax Increment to the extent described in a Pledge Agreement and **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service). To the extent Early Mello-Roos Bond Proceeds are available, they will be used in Phase 1 as follows.

(i) The Port will use an Advance of Parcel K North Proceeds (which will be net of the costs of the 20<sup>th</sup>/Illinois Parcel) and Pier 70 Condo CFD Proceeds available after paying for the Michigan Street segment to pay the Entitlement Sum determined under **Subsection 2.3(a)** (Entitlement Cost Statement) and accrued Developer Return.

(ii) Any remaining Early Mello-Roos Bond Proceeds will be used to pay the remaining Developer Balance and any Port Balance according to **Subsection 2.4(e)** (Pro Rata Payments), subject to the Interest Cost Limitation if applicable.

(iii) Any remaining Early Mello-Roos Bond Proceeds would then be used to pay directly for Phase 1 Horizontal Improvements.

(c) Security. Mello-Roos Bonds will be secured and payable by pledges of applicable categories of Mello-Roos Taxes, subject to Maximum Tax Rates, value-to-lien limitations, and underwriter requirements. Except for Bonds used to pay Excess Return, Special Debt Service on Mello-Roos Bonds will also be secured and payable by pledges of Project Tax Increment to the extent described in a Pledge Agreement and **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service).

(d) Developer's Consent. By entering into the DDA, including this Financing Plan, Developer acknowledges that the Port has the right and obligation, in accordance with an approved Phase Budget, to request that the City issue Early Mello-Roos Bonds and agrees to pay any Facilities Special Taxes that become due before the Port conveys an encumbered Taxable Parcel to a Vertical Developer. In consideration of this agreement, the Port agrees that Developer's Mello-Roos Tax payments made to service Early Mello-Roos Bonds under this Section will be Soft Costs.

## 6. TAX INCREMENT

**6.1. IFD Formation.** In the IFD Formation Proceedings, the City took the following actions with respect to the IFD.

(a) Agreement to Allocate Tax Increment. The City agreed to allocate to the IFD the Annual Allocated Tax Increment as set forth in the Port's annual budget for use in Project Area G in accordance with Appendix G-2 and this Financing Plan.

(b) Appointment of Port as Agent. The City appointed the Port as the IFD Agent with the authority to act on behalf of the IFD to implement this Financing Plan, including:

(i) disbursing Allocated Tax Increment as provided in Appendix G-2;

(ii) determining in collaboration with the Public Finance Division of the Controller's Office whether and in what amounts the IFD will issue Bonds for use in the Sub-Project Areas;

(iii) directing the Indenture Trustees' disbursement of Bond proceeds;

(iv) as security for Special Debt Service on any Mello-Roos Bonds, executing and delivering an agreement pledging, on a first priority basis, the NOI Property Project Tax Increment, and, on a subordinate basis, the Residential Condo Project Tax Increment, as set forth in **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment);

(v) incurring and repaying indebtedness as set forth in Promissory Note-LP and Promissory Note-PC; and

(vi) preparing on behalf of the IFD an annual Statement of Indebtedness in compliance with section 53395.8(i)(2) of the IFD Law reporting on the Sub-Project Areas' revenues and debts, listing the following debts:

(1) the obligation to apply any Allocated Tax Increment from Sub-Project Area G-2 as provided in Appendix G-2;

(2) the obligation to apply any Allocated Tax Increment from Sub-Project Area G-3 as provided in Appendix G-2;

(3) the obligation to apply any Allocated Tax Increment from Sub-Project Area G-4 as provided in Appendix G-2;

(4) obligations under Promissory Note-LP and Promissory Note-PC;

(5) any pledge of Tax Increment to secure Special Debt Service on Mello-Roos Bonds or other debts of the CFD; and

(6) any Tax Increment Bonds issued by the IFD secured, on a first priority basis, from the Residential Condo Project Tax Increment, and, on a subordinate basis, from the NOI Property Project Tax Increment, as set forth in **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment).

**6.2. Tax Allocation MOU.** The Board of Supervisors authorized the Controller, the Assessor, and the Treasurer-Tax Collector to enter into the Tax Allocation MOU with the Port under Charter section B7.320 in furtherance of the Financing Documents with respect to the IFD.

(a) Authorized Actions. The Board of Supervisors authorized and directed the following actions by approving the Tax Allocation MOU.

(i) The Assessor will coordinate efforts with the Port and Developer to place each Development Parcel in the Sub-Project Areas on the assessment roll and determine its Baseline Assessed Value as soon as practicable.

(ii) The Treasurer-Tax Collector will levy and collect in a segregated fund Gross Tax Increment from each Sub-Project Area as directed by the Port as IFD Agent to the extent consistent with the Financing Documents.

(iii) The Controller will disburse Allocated Tax Increment from each Sub-Project Area and a portion of the Allocated Tax Increment from Sub-Project Area G-1 to the IFD for use in Project Area G as directed by the Port as IFD Agent to the extent consistent with Appendix G-1, Appendix G-2, the other Financing Documents, and the Port's approved budget.

(b) Required Cooperation and Consultation. The Port will consult with the Public Finance Division of the Controller’s Office on timing, amounts, and other matters relating to Bonds. The Port, the Treasurer-Tax Collector, the Assessor, and the Controller will cooperate to ensure that the objectives of the Financing Documents will be fulfilled.

**6.3. Sub-Project Area Tax Increment.**

(a) Special Fund for Tax Increment. Section 53396(b) of the IFD Law requires tax increment to be allocated to and paid into a special fund of the district. In compliance with this requirement, the Port has established the Tax Increment Fund in the Special Fund Trust Account with the following segregated accounts for each Sub-Project Area: (i) Project Account; (ii) Port Account; (iii) Shoreline Facilities Account; (iv) Waterfront Set-Aside Account; and (v) other accounts to hold funds to repay indebtedness incurred by the IFD.

(b) Waterfront Set-Aside. Under section 53395.8(g)(3)(C)(ii) of the IFD Law, the IFD may spend the Waterfront Set-Aside “solely on shoreline restoration, removal of bay fill, or waterfront public access to or environmental remediation of the San Francisco waterfront.” Both Parties acknowledge that the IFD Law will prevail over any conflicting provision in this Financing Plan and Appendix G-2.

(c) IFD Administrative Costs. Appendix G-2 authorizes the IFD to fund IFD Administrative Costs from Annual Allocated Tax Increment.

(d) Priority of NOI Property Project Tax Increment. The IFD is authorized to use NOI Property Project Tax Increment from each Sub-Project Area in the priority listed below:

(i) to pay Special Debt Service on Mello-Roos Bonds as described in **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service);

(ii) to fund the Leased Property Backup Fund to the Leased Property Backup Fund Requirement;

(iii) to pledge as security and pay for Tax Increment Bonds;

(iv) to satisfy the Project Payment Obligation, including the Historic Building Feasibility Gap as provided in **Subsection 11.1(a)** (Agreement to Reimburse for Historic Building Feasibility Gap), subject to the Interest Cost Limitation;

(v) to finance directly Horizontal Improvements;

(vi) to pay Promissory Note-LP subject to the Interest Cost Limitation;

(vii) to pay Promissory Note-PC subject to the Interest Cost Limitation;

(viii) after the Project Payment Obligation is satisfied, to pay directly, issue Bonds, or pledge as security for Bonds for Shoreline Protection Facilities, including Pier 70 Shoreline Protection Facilities; and

(ix) subject to Port Commission and Board of Supervisors approval, for any other purpose authorized by Appendix G-2 and IFD Law.

(e) Priority of Residential Condo Project Tax Increment. The IFD is authorized to use Residential Condo Project Tax Increment from each Sub-Project Area in the priority listed below:

(i) to pledge as security and pay for Tax Increment Bonds;

(ii) to pay Special Debt Service on Mello-Roos Bonds as described in **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service);

(iii) to fund the Leased Property Backup Fund to the Leased Property Backup Fund Requirement;

(iv) to satisfy the Project Payment Obligation subject to the Interest Cost Limitation, including the Historic Building Feasibility Gap, as provided in **Subsection 11.1(a)(iii)**;

(v) to finance directly Horizontal Improvements;

(vi) to pay Promissory Note-LP subject to the Interest Cost Limitation;

(vii) to pay Promissory Note-PC subject to the Interest Cost Limitation;

(viii) after the Project Payment Obligation is satisfied, to pay directly, issue Bonds, or pledge as security for Bonds for Shoreline Protection Facilities, including Pier 70 Shoreline Protection Facilities; and

(ix) subject to Port Commission and Board of Supervisors approval, for any other purpose authorized by Appendix G-2 and IFD Law.

**6.4. Port Tax Increment.** The Port will use Port Tax Increment to finance Irish Hill Park, the Historic Building Feasibility Gap, Improvements at Pier 70 outside of the 28-Acre Site as authorized in Appendix G-2. The Port may choose to perform any authorized project as a public work using Port and City staff or a construction manager that is paid a fee for its services. Authorized projects include those listed below.

(a) Use. The Port may use Port Tax Increment to pay directly for or reimburse a third party for the costs to plan, design, and build the Port Improvements at the Illinois Street Parcels, other maritime uses eligible under IFD Law, and Shoreline Protection Facilities.

(b) Historic Building Feasibility Gap. The Port may use Port Tax Increment to pay the Historic Building Feasibility Gap for either or both of Historic Building 12 and Historic Building 21, as set forth in **Section 11.1** (Subsidy for Historic Buildings 12 and 21).

(c) Historic Resources. The Port may use Port Tax Increment to pay the costs to rehabilitate historic resources at Pier 70, but outside of the 28-Acre Site, according to the Secretary's Standards.

#### **6.5. Sub-Project Areas.**

(a) Base Year. Under IFD Law, the base year for Project Area G, including all of its sub-project areas, is City Fiscal Year 2015-2016.

(b) ERAF Tax Increment.

(i) The IFD Formation Proceedings and Appendix G-2 authorize the allocation of Allocated Tax Increment to the IFD for use in Project Area G. Allocated Tax Increment initially will consist of:

(1) the City Share of Tax Increment (64.59% of each property tax increment dollar in FY 2015-2016); and

(2) the ERAF Tax Increment (25.33% of each property tax increment dollar in FY 2015-2016).

(ii) To ensure that the IFD receives the maximum amount of Allocated Tax Increment for the benefit of the Project, the Port and Developer agree to use ERAF Tax Increment from each Sub-Project Area to pay directly for Public

Facilities before Developer Capital or any other available Public Financing Source is used.

(iii) After the ERAF Debt Period for each Sub-Project Area expires, the amount of related ERAF Tax Increment allocated to the IFD will be limited to the amount necessary to service Bonds secured and payable by ERAF Tax Increment.

(iv) Because the Sub-Project Areas are required to use ERAF Tax Increment to pay directly for Public Facilities, the following will apply, separately for each Sub-Project Area and to any Bonds secured and payable by ERAF:

(1) the Bonds will be considered to be issued in the first City Fiscal Year in which the Sub-Project uses ERAF Tax Increment to pay directly for Public Facilities; and

(2) the Bonds must be repaid no later than 45 years after the date the IFD actually receives \$100,000 of Allocated Tax Increment from each Sub-Project Area.

(c) IFD Cap. Subject to the IFD Cap, Appendix G-2 authorizes the allocation of Tax Increment to the IFD for use in Project Area G beginning in the City Fiscal Year following the applicable Sub-Project Area's formation and continuing for 45 years after the date the Sub-Project Area actually receives \$100,000 of Allocated Tax Increment.

(d) Pledge of Tax Increment.

(i) Each Sub-Project Area allocates Tax Increment to the IFD for the purposes specified in this Financing Plan. The Board of Supervisors authorized the IFD to incur debt and to pledge and use Tax Increment as provided in Appendix G-2 and this Financing Plan by Ordinance No. XXXX.

(ii) As described in **Article 7** (Port Advances), the Port intends to meet the Project Payment Obligation under this Financing Plan in part by making Advances of Land Proceeds and Port Capital Advances to the Pier 70 CFDs. Under IFD Law, "debt" includes the Developer Balance, the Port Balance, and amounts owing under Promissory Note-LP.

(iii) The IFD Cap does not limit the amount of debt that the Port, the CFD, or the IFD will undertake under this Financing Plan. The Port represents and warrants that it has not, in its capacity as IFD Agent, made any pledges of Tax Increment from any of the Sub-Project Areas to any other debt as defined under IFD Law.

(e) Acquisition Prices. In accordance with IFD Law section 53395.8(g)(12), the Acquisition Agreement for the Acquiring Agencies' purchases of Developer Improvements specifies a price or method to determine a price for each public facility or discrete portion or phase of a facility, including the interim cost of financing construction. Developer Return will accrue on the initial acquisition prices specified in *AA Exh B*, as revised under *AA § 1.3 (Acquisition Price Updates)* to reflect actual costs as they become known. Payments under the Acquisition Agreement using Project Tax Increment or the proceeds of Bonds secured and payable by Project Tax Increment will be subject to the Interest Cost Limitation.

(f) Increment Carryover. As long as Developer is not in Material Breach of the DDA, Project Tax Increment remaining after payment of all costs and debt incurred for Horizontal Development Costs in any Current Phase will be available for use in a

Later Phase, subject to the 5-year limit on accumulation of tax increment under IFD Law section 53395.2 and other provisions of Governing Law and Policy.

(g) Waterfront Set-Aside. The Port Commission and the Board of Supervisors have approved Appendix G-1 and Appendix G-2. IFD Law and Appendix G-2 allow the Waterfront Set-Aside requirement applicable to Project Area G to be met on a Project Area G-wide basis rather than on a Sub-Project Area basis. Appendix G-1 provides that the Port's use of more than 20% of the Allocated Tax Increment from Sub-Project Area G-1 on Waterfront Set-Aside would allow the IFD, in the discretion of the Port as IFD Agent, to set aside less than 20% of Allocated Tax Increment from the Sub-Project Areas for the Waterfront Set-Aside.

(h) Application of Tax Increment to Special Debt Service.

(i) At the end of each City Fiscal Year, the City shall determine the amount of Project Tax Increment on deposit with the Special Fund Trustee and available to pay the Special Debt Service on Mello-Roos Bonds. In calculating the available amount, the City shall determine amounts from the following sources in the following order of priority (herein, the "**Available Credit Tax Increment**"): (i) NOI Parcel Project Tax Increment; (ii) Residential Condo Project Tax Increment (but only after satisfying the use set forth in **Subsection 6.3(e)(i)** first); and (iii) the Leased Property Backup Fund.

(ii) At the beginning of the next City Fiscal Year, (i) the CFD Administrator will inform the City of the potential Facilities Special Tax levy on each NOI Parcel (assuming, for purposes of this calculation only, no credit for Project Tax Increment) (the "**Potential Facilities Special Tax Levy**") after applying capitalized interest, delinquency collections, and other sources set forth in the RMA for the Pier 70 Leased Property CFD, and (ii) the City will prepare a report to the CFD Administrator that identifies each Assessed Parcel within the Pier 70 Leased Property CFD that paid its ad valorem taxes in the prior City Fiscal Year (the "**Paying Assessed Parcels**").

(iii) If the Available Credit Tax Increment is equal to or greater than the Potential Facilities Special Tax Levy on the Paying Assessed Parcels, the City shall then transfer, or cause to be transferred, to the Mello-Roos Bond Account (28-Acre Site Improvement Special Taxes) all or any portion of the Available Credit Tax Increment equal to the Potential Facilities Special Tax Levy on the Paying Assessed Parcels. Under the RMA for the Pier 70 Leased Property CFD, the CFD Administrator shall (I) not levy any Facilities Special Taxes on the Paying Assessed Parcels within the Pier 70 Leased Property CFD for such City Fiscal Year, but (II) levy the Potential Facilities Special Tax Levy on all parcels other than the Paying Assessed Parcels according to the RMA for the Pier 70 Leased Property CFD.

(iv) If the Available Credit Tax Increment is less than the Potential Facilities Special Tax Levy on the Paying Assessed Parcels, the City will transfer, or cause to be transferred, to the Mello-Roos Bond Account (28-Acre Site Improvement Special Taxes) the entire amount of the Available Credit Tax Increment. Under the RMA for the Pier 70 Leased Property CFD, the CFD Administrator shall (I) apply the amount of the Available Credit Tax Increment on a pro rata basis (based on the Potential Facilities Special Tax Levy of the Paying Assessed Parcels in such City Fiscal Year) to each Paying Assessed Parcel, (II) levy Facilities Special Taxes in such City Fiscal Year on each Paying Assessed Parcel in the amount equal to such Paying Assessed Parcel's Potential Facilities Special Tax Levy less the pro rata portion of the amount of the Available Credit Tax Increment allocated to such Parcel in subsection (I) above, and (III) shall levy

the Potential Facilities Special Tax Levy on all parcels other than the Paying Assessed Parcels according to the RMA for the Pier 70 Leased Property CFD.

(i) Leased Property Backup Fund. The Leased Property Backup Fund shall be funded from Project Tax Increment in the priority set forth in **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment) and **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment). Pursuant to the foregoing subsections, Project Tax Increment may not be used for items lower in priority than the Leased Property Backup Fund until the Leased Property Backup Fund is funded to its Leased Property Backup Fund Requirement.

**6.6. Tax Increment Bonds.** Appendix G-2 authorizes the IFD to issue Tax Increment Bonds in compliance with Governing Law and Policy, subject to the same Project-based constraints, limitations, and procedures applicable to Mello-Roos Bonds under this Financing Plan. The Parties anticipate seeking issuance of Tax Increment Bonds to fund the Project Payment Obligation secured, on a first-priority basis, from Residential Condo Project Tax Increment and, on a subordinate basis, from NOI Property Project Tax Increment. However, the Port and City shall not issue Tax Increment Bonds secured by the NOI Property Project Tax Increment until the Leased Property Backup Fund has reached its Leased Property Backup Fund Requirement. Any reference in this Financing Plan to the Project Share of Tax Increment or Mello-Roos Bonds secured and payable by Project Tax Increment will also mean the proceeds of any Tax Increment Bonds that the City issues for those purposes.

**6.7. Validation.** Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the Sub-Project Areas and matters authorized under Appendix G-2 and this Financing Plan. Attorneys' fees associated with these validation actions will be Port Costs or City Costs that are reimbursable under **Section 9.2** (Port Accounting and Budget).

## 7. PORT ADVANCES

### 7.1. Port Revenues.

(a) Allowed Uses of Port Revenues. Under the Burton Act, AB 418, and Charter section B6.406, Land Proceeds and Port Capital are public trust revenues that must be deposited into the Port Harbor Fund. Once deposited into the Port Harbor Fund, the Port may spend those revenues subject to any priorities established under any Indenture or other debt instrument secured and payable by those funds, for:

- (i) uses specified in section 3 and section 5 of the Burton Act;
- (ii) uses specified in Charter appendix B;
- (iii) uses specified in AB 418 and any other state legislation authorizing Port expenditures; and
- (iv) other uses consistent with the public trust.

(b) Trust Consistency. The Port Commission has determined that the Port's use and handling of Land Proceeds and Port Capital as specified in this Financing Plan are authorized under AB 418 and the Charter and are otherwise consistent with the public trust and the Burton Act.

**7.2. Port Election.** At its sole election and subject to **Section 1.7** (Additional Sources), the Port will have the right to use any source that is less costly than Developer Capital for purposes consistent with this Financing Plan. The procedures applicable to the Port's decisions to use Port Capital are described in **Subsection 7.5(a)** (Port's Right) and are expressly excluded from **Section 1.7** (Additional Sources). Each Port Advance will be treated as specified in this Article.

### 7.3. Advances of Land Proceeds.

(a) Use of Land Proceeds. The Port will use Land Proceeds to make Advances of Land Proceeds to the Pier 70 CFDs to extent necessary to pay the Developer Balance and the Port Balance outstanding whenever Land Proceeds are available.

(b) Promissory Note-LP and Promissory Note-X.

(i) Before the Port makes the first Advance of Land Proceeds by application of cash or a Credit Bid to the Project Payment Obligation, the CFD Agent will sign Promissory Note-LP in the form of **FP Exhibit D** and Promissory Note-X in the form of **FP Exhibit F** and deliver them to the Port.

(ii) Contemporaneously with each Advance of Land Proceeds, the CFD Agent will provide to the Port the following information with respect to the application of funds:

(1) the date and Phase to which each entry applies;

(2) amounts applied to pay the Developer Balance, accounting separately for amounts applied to the Entitlement Sum, Developer Capital spent on other Horizontal Development Costs, Allowed Developer Return, and Excess Return;

(3) amounts applied to pay the Port Balance, accounting separately for amounts applied Port Capital spent on Horizontal Development Costs, Allowed Return on Port Capital, and Excess Return; and

(4) amounts used to pay directly for Horizontal Development Costs.

(iii) The Port will enter on the allonge to Promissory Note-X the date, Phase, and any portion of an Advance of Land Proceeds used to pay Excess Return to Developer or Excess Return to the Port. The Port will enter on the allonge to Promissory Note-LP all other information regarding the Advance.

(iv) Interest will begin to accrue on each Advance of Land Proceeds from the date of the Advance at the annual rate of **XXXX%**, compounded quarterly, until paid.

(v) Contemporaneously with each payment that the CFD Agent makes to the Port to apply to Promissory Note-LP, the Port will enter on the allonge the application of the funds. The Port will apply payments first to pay accrued interest, then to principal in chronological order of each Advance of Land Proceeds.

(vi) The CFD Agent will not make any payments on Promissory Note-X until Promissory Note-LP has been paid in full.

**7.4. 20<sup>th</sup>/Illinois Parcel Land Proceeds.** The Port Commission and the Board of Supervisors have authorized the Port to publicly offer and sell the 20<sup>th</sup>/Illinois Parcel, subdivided into Parcel K North and Parcel K South, at Fair Market Value. The Advance of Land Proceeds from the sale of Parcel K North will be treated as specified in **Subsection 7.3(b)** (Promissory Note-LP and Promissory Note-X).

(a) Parcel K North.

(i) The Port has established Parcel K North's Fair Market Value based on its highest and best use by a proprietary appraisal, which the Port has used to establish a minimum offering price for Parcel K North. The Port has begun the



process to publicly offer the parcel for sale in accordance with the Port's customary procedures. The offering is open to all qualified bidders, including Developer.

(ii) The bid documents specify as follows.

(1) The winning bidder must deposit the purchase price and Developer Closing Costs into Escrow and Close of Escrow must occur as set forth in the DDA.

(2) The Port may require the purchasers to build the 20<sup>th</sup>/Illinois Plaza. In that circumstance, the offering documents will specify an allowance for the required Improvements, and the amount of each offset will be deemed to be an Advance of Land Proceeds.

(3) The Port may require the purchasers to build the Michigan Street segment as the Port's fee developer. In that circumstance, the offering documents will specify a cost allowance that the Port will pay with the proceeds of Mello-Roos Bonds secured and payable by Facilities Special Taxes levied in the Pier 70 Condo CFD.

(iii) If the winning bidder is an Unrelated Vertical Developer, the Port will instruct the Escrow Agent to disburse the Parcel K North Proceeds in the following order of priority from Escrow at Closing as follows, until the funds have been disbursed fully:

(1) an Advance of Land Proceeds to pay Excess Return included in the Entitlement Sum and Excess Return accrued since the Reference Date;

(2) an Advance of Land Proceeds to pay the balance of the Entitlement Sum and Allowed Developer Return accrued since the Reference Date;

(3) an Advance of Land Proceeds to pay the Developer Balance and the Port Balance, subject to **Subsection 2.4(e)** (Pro Rata Payments); and

(4) for deposit into the Land Proceeds Fund.

(iv) If Developer is the winning bidder, its selected Vertical Developer Affiliate may pay at least in part by Credit Bid subject to all limitations and conditions of **Section 3.3** (Right to Credit Bid) and **Section 3.4** (Amount of Credit Bid). The Credit Bid will be recorded as an Advance of Land Proceeds.

(v) This clause will apply only if the Closing has not occurred by the first anniversary of the Reference Date, and the delay is not caused by Environmental Delay, Litigation Delay, or Developer's acts or omissions. In 60 days after the first anniversary of the Reference Date, the Port must elect one of the following options.

(1) The Port may elect to make an Advance to the CFD in an amount equal to the appraised Fair Market Value of Parcel K North, which will be treated as an Advance of Land Proceeds and applied as set forth in **clause (iii)** of this Subsection. Under this election, the proceeds of any later Port sale of Parcel K North would be Harbor Fund Revenues free of any restrictions under this Financing Plan.

(2) The Port may make an offer to sell Parcel K North to a Vertical Developer Affiliate at its appraised Fair Market Value by a Credit

Bid subject to all limitations and conditions of **Section 3.3** (Right to Credit Bid) and **Section 3.4** (Amount of Credit Bid) and otherwise on terms specified in the bid package and the Vertical DDA for the parcel, except the requirement for an appraisal under *DDA art. 7 (Parcel Conveyances)*. If sold under this clause, the Credit Bid will be treated as an Advance of Land Proceeds.

## **7.5. Port Capital Advances.**

(a) Port's Right. The Port has the right to invest Port Capital when Land Proceeds and Public Financing Sources are not projected to be available to pay for projected Horizontal Development Costs, subject to the following limitations to allow for a coordinated plan of finance and associated capital formation activities by Developer.

(i) During its review of a Phase Budget, the Port may commit to use Port Capital, separate from or including the Port Share of any Interim Satisfaction Balance, by providing notice to Developer in 60 days after Developer submits the proposed Phase Budget.

(ii) The Port may propose to invest Port Capital at other times during a Phase. To do so, the Port must notify Developer of the proposed amount and use of Port Capital at least 6 months before the projected date of a capital expense in the Phase Budget.

(iii) The Parties will meet and confer promptly after the Port's notice to agree on the timing and amount of any proposed Port Capital Advance. After the Parties have agreed, the Port must deposit the agreed amount of Port Capital in the Port Capital Advance Fund held by the Special Trustee at least four months before the agreed date. Developer must exhaust the Port Capital Advance before spending Developer Capital.

(iv) Port Capital Advances may be used to pay directly for Phase Improvements that would otherwise be paid by Developer Capital or to reimburse Developer for costs of Phase Improvements when no Public Financing Sources are available. If the Port uses a Port Capital Advance to reimburse Developer for costs of Phase Improvements when no Public Financing Sources are available, then **clauses (i)-(iii)** of this Subsection will not apply.

(b) Delivery and Use of Port Capital Advances.

(i) If the Port meets the time frames in **clause (i)** and **clause (ii)** of **Subsection 7.5(a)** (Port's Right), but the funds are subject to the annual City budget process, the Port must deliver the funds to the Special Fund Trustee for deposit in the Port Capital Advance Fund no later than three months after the Board of Supervisors approves the appropriation.

(ii) If the funds are Project-generated, such as the Port Share of any Interim Satisfaction Balance, the Port must direct the Escrow Agent to disburse the funds from Escrow to the Special Fund Trustee for deposit in the Port Capital Advance Fund.

(c) Promissory Note-PC.

(i) Before the Port makes the first Port Capital Advance, the CFD Agent will sign Promissory Note-PC in the form of **FP Exhibit G** to which an allonge is attached and deliver it to the Port.

(ii) Contemporaneously with each Port Capital Advance, the CFD Agent will provide to the Port for entry on the allonge the following information with respect to the application of funds:

- (1) the date and Phase to which each entry applies; and
- (2) amounts applied to pay the Entitlement Sum, Horizontal Development Costs, Allowed Developer Return, and Excess Return.

(iii) Return on Port Capital will begin to accrue on the date of that the Special Fund Trustee disburses each Port Capital Advance at the annual rate of 10%, compounded quarterly, until paid.

(iv) The Port will update the Port Capital Schedule after any quarter in which it makes a Port Capital Advance or receives a payment on Promissory Note-PC to provide ongoing updates of the status of the Port Balance.

(d) Port Withdrawal from Port Capital Advance Fund. If both of the following conditions are satisfied, the Port may withdraw funds in the Port Capital Advance Fund.

(i) An Interim Satisfaction Event exists.

(ii) Available proceeds of Mello-Roos Bonds or Tax Increment Bonds or both are available when needed to pay directly for all remaining Phase Improvement Costs in the Phase Budget.

#### **7.6. CFD Payment Obligations.**

(a) Sources to Repay Port Advances.

(i) Subject to the Interest Cost Limitation as applicable, the Pier 70 CFDs may use Public Financing Sources to pay Promissory Note-LP, Promissory Note-PC, and Promissory Note-X.

(ii) The Pier 70 CFDs will be authorized to direct the Special Fund Trustee to disburse funds in the Land Proceeds Fund in accordance with **Subsection 2.4(d)** (Priorities for Payments) to pay Promissory Note-PC.

(b) Promissory Note-PC. Funds that the Pier 70 Leased Property CFD and the Pier 70 Condo CFD pay to the Port for application to Promissory Note-PC will be Port Harbor Revenues upon delivery to the Port. Payments will be recorded on the Port Capital Schedule.

(c) Promissory Note-LP.

(i) Any amount that either of the Pier 70 CFDs or the IFD pays to the Port for application to Promissory Note-LP will be deemed Land Proceeds and will be deposited in the Revenue Account of the Land Proceeds Fund for disbursement in accordance with **Subsection 3.2(c)** (Revenue-Sharing). Disbursements will not be recorded on the Developer Capital Schedule or the Port Capital Schedule.

(ii) Promptly after accepting the Final Audit, as adjusted under **Subsection 3.10(a)** (Distribution of Land Proceeds after Final Audit), the Port will: (1) execute and deliver to Developer an assignment in the form of **FP Exhibit E**, dated as of the date the Port accepts the Final Audit; (2) provide a copy of the assignment to the CFD Agent; and **clause (i)** of this Subsection will apply; and (3) any amount that the Pier 70 Leased Property CFD, the Pier 70 Condo CFD, or the IFD thereafter pays to the Port for application to Promissory Note-LP will continue to be deemed Land Proceeds and will be deposited in the Land Proceeds Fund for disbursement in accordance with Article 3.

(d) Promissory Note Entries. The Port agrees to make contemporaneous entries on Promissory Note-LP, Promissory Note-X, and Promissory Note-PC to track Advances of Land Proceeds, Port Capital Advances, the accrual of Interest on Land Proceeds, Return on Port Capital, and the application of Project Payment Sources to Promissory Note-LP, Promissory Note-X, and Promissory Note-PC.

## 8. ACQUISITION OF DEVELOPER IMPROVEMENTS

### 8.1. Commercially Reasonable Costs.

(a) Deemed Reasonableness. For work described in Developer's construction contracts, not including change orders, any Horizontal Development Cost that Developer incurs will be deemed commercially reasonable and to represent the fair market value price of a Horizontal Improvement if the contract is secured through a competitive bid process with three or more qualified firms and awarded to the lowest responsible bidder.

(b) Lowest Responsible Bidder. Developer will select the lowest responsible bidder after considering price and proposed schedule, with other factors such as the contractor's ability to contribute to Developer's obligations under the Workforce Program, Local Hiring, and other contracting goals and requirements, financial strength, proposed project team, and any unique benefits offered to the Project.

(c) Sole Source Contracts. If Developer selects a contractor to perform a particular scope as a sole source, Developer must validate the bid by:

(i) providing the Port with an analysis of Soft Costs relative to the expected Project budget;

(ii) providing the Port with an engineer's cost estimate for Hard Costs;  
or

(iii) demonstrating that the product or service is available from only one supplier in the Bay Area region.

(d) Port Validation. The Port may hire a third-party consultant to validate the Hard Costs and Soft Costs when evaluating the commercial reasonableness of Horizontal Development Costs. However, the Port evaluation of costs through a third party consultant shall not supersede **clauses (a)-(c) of Subsection 8.1** (Commercially Reasonable Costs) for determination of commercially reasonable costs.

### 8.2. Guaranteed Maximum Price Contract.

(a) Selection Process. If Developer uses a Guaranteed Maximum Price form of contract, it will select a CM-GC in accordance with **Subsection 8.1(a)** (Deemed Reasonableness) and **Subsection 8.1(b)** (Lowest Responsible Bidder) before the preconstruction period.

(b) Bid Requirements. In its bid, the CM-GC must identify the following:

(i) preconstruction costs;

(ii) General Conditions as a fixed monthly cost for the staff and support necessary to complete the Horizontal Improvements;

(iii) a construction management fee as a fixed percentage to be applied to the cost of Horizontal Improvements;

(iv) a preliminary estimate for the cost of the Horizontal Improvements; and

(v) any Horizontal Improvements the CM-GC intends to self-perform.

(c) Contract Negotiations.

(i) At the end of the preconstruction period, Developer will negotiate a GMP contract based on budgeting and estimating performed by the CM-GC in collaboration with various sub-trades at various design milestones during preconstruction.

(ii) Developer will have the option to proceed under the negotiated GMP contract terms or terminate the CM-GC and issue a new bid solicitation for in accordance with **Subsection 8.1(a)** (Deemed Reasonableness) and **Subsection 8.1(b)** (Lowest Responsible Bidder). The selected CM-GC will be required to solicit competitive bids in accordance with **Section 8.1** (Commercially Reasonable Costs) for each sub-trade package including work it wishes to self-perform.

(iii) GMP contract terms will limit contingency to less than 15% unless it is determined by a competitive bidding process that the market terms for contingency are higher than 15%, in which case the contingency may be set consistent with market terms and Developer will notify Port of the contingency amount.

(iv) Customary incentives to ensure performance actually paid to the CM-GC under the GMP contract will be considered a commercially reasonable cost of the contract.

**8.3. Progress Payments.** Under the Acquisition Agreement, the Port will make progress payments from time to time using Project Payment Sources as each source becomes available. If requested in Developer's Payment Request, specified payments will be made directly to Developer's contractors.

**8.4. Payment Conditions.** Developer acknowledges that it must satisfy all conditions to payment in the Acquisition Agreement before the Port will be obligated to approve a Payment Request.

**8.5. Reimbursements for Horizontal Development Costs.** Developer and the Port acknowledge the following.

(a) Expenditures in Reliance of Reimbursement and Return. Developer's use of Developer Capital before Land Proceeds and Public Financing Sources are available is not a gift or a waiver of Developer's right to reimbursement for Horizontal Development Costs and to receive Developer Return.

(b) Payments in Installments. Developer will be reimbursed for Horizontal Development Costs and receive Developer Return in installments as Project Payment Sources become available in accordance with this Financing Plan and the Acquisition Agreement, and Developer Return will accrue on any unpaid balance until the Developer Balance is satisfied by all available Project Payment Sources.

(c) Limited Project Revenues and Sources.

(i) Both Parties wish to use Public Financing Sources to the greatest extent and as early as feasible for Horizontal Development Costs.

(ii) Developer expressly acknowledges that:

(1) the Port's Public Financing Sources to pay Excess Return will be limited to Mello-Roos Taxes and Mello-Roos-only Bonds;

(2) the Port's and the financing districts' payment obligations are not guaranteed and are subject to **Section 1.8** (Limitations on Sources); and

(3) while the Port may elect in its sole discretion to make Port Capital Advances for the Project, it is under no obligation, and may not be compelled, to use Port Capital except to the extent that it makes a commitment to do so under **Section 7.5** (Port Capital Advances).

(d) Termination of Acquisition Agreement. The Acquisition Agreement is an independent contract that will survive termination of this Financing Plan unless the Acquisition Agreement has expired on its own terms.

## 9. REPORTING

### 9.1. Developer Accounting.

(a) Phase Accounts. Developer agrees to establish and maintain separate Phase Accounts for each Phase in form reasonably approved by the Port to track Developer's Horizontal Development Costs for Phase Improvements as they are incurred, the accrual of Developer Return on its unreimbursed Horizontal Development Costs, and the application of Project Payment Sources to accrued Developer Return and unreimbursed Horizontal Development Costs. Each Phase Account must calculate separately accrual of Developer Return up to the Interest Cost Limitation and accrual of Excess Return.

(b) Developer Quarterly Reports. Quarterly, after the date of each Phase Approval and continuing until the Project Payment Obligation has been fully satisfied, Developer will prepare and deliver to the Port a Developer Quarterly Report in a form reasonably acceptable to the Port. Developer Quarterly Reports must include the following information, reported separately for each Phase for which Developer has obtained a Phase Approval and in the aggregate for the Project as a whole:

(i) if applicable, a statement of Horizontal Development Costs previously incurred by Developer but not yet reimbursed;

(ii) updated estimates if any have been prepared, of additional Horizontal Development Costs for Phase Improvements and actual Horizontal Development Costs incurred as specified in this Subsection;

(iii) accrued paid and unpaid Developer Return, accounting separately for Developer Return up to the Interest Cost Limitation and Excess Return;

(iv) if applicable, adjustments to the prior Developer Quarterly Report;

(v) application of Project Payments Sources that Developer has received during the reporting period, accounting separately for each source;

(vi) new development expected to occur or that is occurring, and, if available to the Developer, the assessed value of which is expected to be included on the secured real property tax roll in the City Fiscal Year before the Later Phase Developer Quarterly Report will be due;

(vii) any conveyances of Development Parcels that are expected to occur and if, based on available information, Developer reasonably expects the assessed value will be included on the secured real property tax roll for a City Fiscal Year before the Later Phase Developer Quarterly Report will be due;

(viii) Cumulative IRR, accounting for any distributions of Interim Satisfaction Balance and anticipated future distributions for the Current Phase; and

(ix) Port Costs and Other City Costs, billed, paid, and unpaid.

(c) Effect of Termination.

(i) Subject to **clause (ii)** of this Subsection, Developer Quarterly Reports must cover all Phases, even if Developer has Transferred part or all of its interest in a Phase to an Unrelated Transferee.

(ii) Developer's obligation to provide Developer Quarterly Reports will terminate as to any Terminated Phase after Developer has provided to the Port the Developer Quarterly Report covering the reporting period ending on the applicable Termination Date.

(iii) Developer will be obligated to provide a Phase Audit under **Subsection 9.3(a)** (Phase Audit) for any Terminated Phase covering the Phase up to the Termination Date and to cooperate with any successor master developer to the extent necessary for the successor to complete any Phase Audit required under **Subsection 9.3(a)** (Phase Audit) and Final Audit required under **Subsection 9.3(b)** (Final Audit).

**9.2. Port Accounting and Budget.**

(a) Accounting for Use of Port Capital. Quarterly, after the date of each Phase Approval and continuing until the Project Payment Obligation has been fully satisfied, the Port will prepare and deliver to the Developer a Port Quarterly Report in a form reasonably acceptable to the Developer. Port Quarterly Reports must include the following information, reported separately for each Phase for which Developer has obtained a Phase Approval and in the aggregate for the Project as a whole: (i) all entries under **Subsection 7.6(d)** (Promissory Note Entries); (ii) accrued paid and unpaid Return on Port Capital, accounting separately for Return on Port Capital up to the Interest Cost Limitation and Excess Return; (iii) if applicable, adjustments to the prior Port Quarterly Report; (iv) application of Project Payment Sources that Port has received during the reporting period, accounting separately for each source; and (v) Port Costs and Other City Costs, billed, paid, and unpaid. .

(b) Budget Preparation.

(i) Within 90 days after the Reference Date: (A) the Port will deliver to Developer an estimate of Port Costs and Other City Costs projected to be incurred through the end of City Fiscal Year 2018-2019; and (B) the Port and Developer will meet and confer to create a budget of projected Port Costs, Other City Costs, and Public Financing Sources for the period ending June 30 of the 2018-2019 City Fiscal Year. By October 1 of each year during the DDA Term, the Port and Developer will meet and confer on an Annual Port Budget for the next City Fiscal Year.

(ii) To aid the Port in preparing its budget, Developer will provide its estimates of Horizontal Development Costs for all Horizontal Improvements that it expects to build in the next City Fiscal Year by Quarter. By March 1 of each City Fiscal Year, the Port will advise Developer of Advances of Port Capital that the Port intends to include in its proposed budget as a Project Payment Source, subject to the City's annual budget approval process.

(iii) The Port will prepare a preliminary budget estimating Port Costs and Project Payment Sources. The Port will also request estimates of Other City Costs from each other City Agency, including those to be provided by Public Works under *DA § 3.7(c) (Payment of Other City Costs)*.

(c) Contents of Annual Budget. The preliminary budget will provide quarterly estimates of projected Public Financing Sources, Port Costs, and Other City Costs for allocated Port and City staff by department and category and include estimated

fees payable to third-party professionals that the Port and other City Agencies have engaged or expect to engage. The Port will update its preliminary budget through an iterative process and discussions with Developer as the Port obtains more information. Through this process, the Port and Developer will agree on the Annual Port Budget and agree on the amount that the Port will retain from Public Financing Sources to offset Port Costs and Other City Costs and an estimate of the remaining amount that Developer will be required to pay.

(d) City and State Authority. Developer acknowledges that the Port's departmental budget and budget supplements are subject to review and approval by the Port Commission and the Board of Supervisors, each in its sole discretion. Developer also acknowledges that the Port's budget, including the Annual Port Budget, is subject to applicable requirements of AB 418, the public trust, and the Charter.

(e) Reporting.

(i) Within 90 days after the end of each quarter during the DDA Term, the Port Director will deliver to Developer a Port Quarterly Report that states the Port's Horizontal Development Costs for Port Improvements, Port Costs, Other City Costs, and Project Payment Sources for the previous quarter and in comparison to the Annual Port Budget. The Port Director or the Port Finance Director must certify that each Port Quarterly Report is complete and complies with this Section to her knowledge. Each Port Quarterly Report will be binding on Developer in the absence of error that Developer demonstrates in six months after receipt.

(ii) The report must be in a reasonably detailed form and include copies of invoices from any third-party professionals. The Port must provide additional information and supporting documentation about Port Costs at Developer's reasonable request. The Port and Developer agree to cooperate to develop a reporting format that satisfies Developer's reasonable informational needs without divulging any privileged or confidential information of the Port, the City, or their respective Agents.

(iii) Within six (6) months after the Project Payment Obligation for Horizontal Development Costs is satisfied, the Port will prepare a Final Port Report providing cumulative, detailed information about the Port's Horizontal Development Costs and Interest on Port Capital spent for Port Improvements. The Final Port Report will be subject to Developer's rights under **Subsection 9.4(b)** (Developer Audit).

### **9.3. Audit Obligations.**

(a) Phase Audit.

(i) In reference to each Phase, except as to any portion for which the DDA has been terminated or unless otherwise approved by the Port Director, Developer must submit to the Port a Phase Audit prepared by a CPA that updates all financial matters included in previously submitted Developer Quarterly Reports through the Phase Audit Date. The CPA must prepare the report according to a scope of review agreed upon by the Port and the Developer. The cost of a Phase Audit will be a Soft Cost.

(ii) Subject to **clause (iii)** of this Subsection, the Phase Audit Date for each Phase will be six months after the later of the date that the Port has: (1) conveyed the last Option Parcel to be conveyed in the Phase; or (2) issued the Certificate of Completion.



(iii) The Phase Audit Date for any Terminated Phase will be six months after the Termination Date.

(iv) The Port will have two months to review and accept each Phase Audit without prejudice to its rights under **Subsection 9.4(a)** (Port Audit).

(b) Final Audit.

(i) The Final Audit Date for the Horizontal Improvements will be six months after the Port has satisfied the Project Payment Obligation for the Developer Balance and all Development Parcels have been conveyed to Vertical Developers. Developer must submit to the Port the Final Audit prepared by a CPA, except as to any terminated Phase, which updates all of the matters included in all Phase Audits through the Final Audit Date. The CPA will prepare the report according to a scope of review approved by the Port.

(ii) The Final Audit will provide the basis for determining: (1) whether a Project Surplus exists; and (2) the final distribution of Land Proceeds under **Section 3.10** (Distribution of Project Surplus).

(iii) The Port will have two months to review and accept each Phase Audit without prejudice to its rights under **Subsection 9.4(a)** (Port Audit).

#### 9.4. Audit Rights

(a) Port Audit. The Port will have the right to conduct a Port Audit of Books and Records pertaining to a Phase Audit and of the Final Audit. Such audit will be conducted during normal business hours upon no less than 10 business days' notice at the principal place of business of Developer in San Francisco or other places where Books and Records are kept. Port will provide Developer with copies of any audit performed. The Port must notify Developer of the Port's intent to conduct a Port Audit no more than two years after receiving the Phase Audit or Final Audit that the Port intends to review.

(i) Port Costs. The Port will bear its own audit costs unless a Port Audit reveals that Developer's Horizontal Development Costs for any category, including accrued Developer Return, are overstated by 5% or more from those stated in the Phase Audit or Final Audit under review. In that case, the costs of the Port Audit will be reimbursable Port Costs under the DDA.

(ii) Dispute Resolution. The Parties may agree to submit disputes over whether any of Developer's Horizontal Development Costs for any category are overstated by 5% or more to nonbinding arbitration under *DDA § 10.3* (General Arbitration Procedures).

(b) Developer Audit. Developer will have the right to conduct a Developer Audit of the Port's Horizontal Development Costs as reported in the Final Port Report. Such audit will be conducted during normal business hours upon no less than 10 business days' notice at the Port's administrative offices in San Francisco. Developer will provide Port with copies of any audit performed. Developer must notify the Port of Developer's intent to conduct a Developer Audit no more than two years after receiving the Final Port Report.

(i) Developer Costs. Developer will bear its own audit costs unless a Developer Audit reveals that the Port's Horizontal Development Costs for any category are overstated by 5% or more from those stated in the Final Port Report. In that case, the costs of the Developer Audit will be reimbursable Soft Costs under the DDA.

(ii) Dispute Resolution. The Parties may agree to submit disputes over whether any of the Port's Horizontal Development Costs for any category are

overstated by 5% or more to nonbinding arbitration under *DDA Section 10.3* (General Arbitration Procedures).

#### **9.5. Books and Records.**

(a) Books and Records. Developer must keep in its San Francisco office Books and Records of all: (i) Developer Capital spent on Horizontal Development Costs of Horizontal Improvements; (ii) application of Project Payment Sources and any other sources to pay for or reimburse Developer's Horizontal Development Costs and pay Developer Return, organized by Phases; and (iii) Phase Accounts, Developer Quarterly Reports, Phase Audits, and the Final Audit, under generally accepted accounting principles consistently applied, or in another format approved by the Port. Developer must maintain Books and Records for each Phase for the longer of two years after the applicable date that the Port accepts a Phase Audit under **Subsection 9.3(a)** and the date on which any Port Audit is final or any litigation or dispute resolution proceeding relating to Developer's Books and Records or any Port Audit is finally concluded. After reasonable notice, Developer will make its Books and Records available to the Port during regular business hours.

(b) Port Books and Records. The Port agrees to provide copies of its annual Statement of Indebtedness and financial statements (audited, if available) relating to each of the Sub-Project Area's Appendices to Developer as soon as practicable following their public filing or release, until the Final Audit Date. The Port must retain and make its Books and Records related to Promissory Note-LP and Promissory Note-X available for Developer's review and audit until the Final Audit Date.

#### **9.6. Consultants.**

(a) Port Consultants. The Port, following consultation with Developer, will select any consultants that the Port deems reasonably necessary to form the CFDs and the Sub-Project Areas, prepare Appendix G-2 and the RMAs, issue Bonds, and otherwise implement the DDA. The Port currently anticipates engaging special tax consultants, tax increment fiscal consultants, appraisers, financial advisors, bond underwriters, absorption consultants, bond counsel, bond trustees, escrow agents, and escrow verification agents, without prejudice to its right to engage other consultants as the need arises. Under **Subsection 4.5(b)** (Priority Administrative Costs) and **Subsection 6.3(c)** (IFD Administrative Costs), the Port's reasonable out-of-pocket costs for financing consultants will be reimbursed from the proceeds of Public Financing Sources to the extent permitted under Governing Law and Policy. Any unreimbursed consultant costs will be Port Costs. However, the Port will not be entitled to payment of any third-party costs or Other City Costs: (A) that are billed to the Port more than 12 months after the services were provided; and (B) any invoice for such third-party costs or Other City Costs that the Port timely receives, if the Port does not forward it to Developer in 4 months after the Port receives it.

(b) Developer Consultants. Developer may engage its own consultants to advise it on matters related to the DDA, the Financing Plan, the implementation of any Public Financing Sources, or the issuance of any Bonds, and its reasonable out-of-pocket costs that are not reimbursed from Public Financing Sources will be Soft Costs.

### **10. ARTS BUILDING**

#### **10.1. Arts Program.**

(a) Purpose. The DDA describes the provision of affordable arts space on Parcel E-4 as an associated public benefit.

## **10.2. Arts Building Funding.**

(a) Port Subsidy. The Port will subsidize the Arts Building by providing the no-cost lease to the Arts Master Tenant.

(b) Use of Arts Building Proceeds.

(i) Based on reasonably expected interest rates, the Arts Building Special Taxes have been established to be sufficient to generate approximately \$20 million in Arts Building Proceeds.

(ii) Regardless of the actual amount of Arts Building Proceeds, the Arts Building Proceeds will be utilized to finance the following improvements in the following order of priority and in the following amounts:

(1) If the Noonan Replacement Space is not located within the Arts Building:

(A) the first \$13.5 million of the Arts Building Proceeds will be available to finance the hard and soft costs of the Noonan Replacement Space;

(B) if the Vertical Developer constructing the Arts Building demonstrates that it has raised \$17.5 million in private or philanthropic capital, the next \$4 million of the Arts Building Proceeds will be available to finance the hard and soft costs of the Arts Building;

(C) subject to satisfying the CF Conditions, the next \$2.5 million of the Arts Building Proceeds will be available to finance community facilities; and

(D) any remaining Arts Building Proceeds will be available to match private or philanthropic capital raised by the Vertical Developer to finance additional hard and soft costs of the Arts Building.

(2) If the Noonan Replacement Space is incorporated into a larger Arts Building:

(A) if the Vertical Developer constructing the Arts Building demonstrates that it has raised \$17.5 million in private or philanthropic capital, up to \$17.5 million of the Arts Building Proceeds will be available to finance the hard and soft costs of the Arts Building;

(B) subject to satisfying the CF Conditions, the next \$2.5 million of the Arts Building Proceeds will be available to finance community facilities; and

(C) any remaining Arts Building Proceeds will be available to match private or philanthropic capital raised by the Vertical Developer to finance additional hard and soft costs of the Arts Building.

## **11. HISTORIC BUILDINGS**

**11.1. Subsidy for Historic Buildings 12 and 21.** The Parties agreed to this section after concluding that payment of the Historic Building Feasibility Gap meets the requirements for use of Special Taxes and Allocated Tax Increment under the CFD Law and the IFD Law.

(a) Agreement to Reimburse for Historic Building Feasibility Gap.

(i) The Historic Building Feasibility Gap will be determined separately for each of Historic Building 12 and Historic Building 21.

(ii) At the earlier of one year after receipt of a TCO or 90% occupancy of space in the applicable Historic Building, a final calculation of the Historic Building Feasibility Gap will be determined using the formula set forth in **Subsection 11.1(b)** (Formula) based on actual revenues, costs, and Historic Tax Credits received.

(iii) Once determined, the Historic Building Feasibility Gap will be paid to the applicable Vertical Developer Affiliate from the next available Public Financing Sources, including any available Port Tax Increment.

(iv) As a condition to providing Public Financing Sources to the Historic Building Feasibility Gap, the Port will have the right to approve construction drawings for the Historic Building. The applicable Vertical Developer Affiliate will maintain a Historic Building Schedule in a format approved by the Port to account for eligible costs and application of Public Financing Sources to the applicable Historic Building Feasibility Gap.

(v) Contemporaneously with the commencement of construction of each of Historic Building 12 and Historic Building 21, the Port intends to issue Mello-Roos Bonds sized based on the amount of Facilities Special Taxes anticipated to be generated from Historic Building 12 or Historic Building 21, as applicable.

(b) Formula. The Historic Building Feasibility Gap will be calculated separately for Historic Building 12 and Historic Building 21 as follows:

(i) Add the applicable Vertical Developer Affiliate's actual Historic Building Costs;

(ii) Subtract from the sum above the capitalized value of the actual net operating income, assuming a 7% capitalization rate;

(1) The capitalized value will account for the net present value impact of guaranteed participation rent to the Port of 3.5% of modified gross revenues starting in lease year 30; and

(2) Subtract the actual contributions made by Historic Tax Credit investors.

## 12. AFFORDABLE HOUSING

**12.1. Affordable Housing Plan.** Developer's obligations under the Affordable Housing Plan are to:

(a) deliver construction-ready development pads for the Affordable Housing Parcels;

(b) build at least 20% Inclusionary Units in any Market-Rate Rental Project at rates that are affordable to persons of low and moderate income; and

(c) pay Affordable Housing Fees in lieu of providing onsite Inclusionary Units in Residential Condo Project.

**12.2. IRFD Formation.** In the IRFD Formation Proceedings, the City took the following actions with respect to the IRFD.

(a) Agreement to Allocate Housing Tax Increment. The City agreed to allocate to the IRFD the Allocated Housing Tax Increment as set forth in MOHCD's annual budget for use in the 28-Acre Site in accordance with the IRFD Financing Plan and this Financing Plan.

(b) Appointment of Port as Agent. The City appointed the Port as the IRFD Agent with the authority to act on behalf of the IRFD to implement this Financing Plan, including:

(i) disbursing Allocated Housing Tax Increment as provided in the IRFD Financing Plan;

(ii) determining in collaboration with the Public Finance Division of the Controller's Office whether and in what amounts the IRFD will issue Housing Tax Increment Bonds;

(iii) directing the Indenture Trustees' disbursement of Bond proceeds; and

(iv) preparing on behalf of the IRFD an annual report for posting on the Board of Supervisors' webpage in compliance with section 53369.26 of the IRFD Law.

**12.3. Tax Allocation MOU.** The Board of Supervisors authorized the Controller, the Assessor, and the Treasurer-Tax Collector to enter into the Tax Allocation MOU with the Port under Charter section B7.320 in furtherance of the Financing Documents with respect to the IRFD.

(a) Authorized Actions. The Board of Supervisors authorized and directed the following actions by approving the Tax Allocation MOU.

(i) The Assessor will coordinate efforts with the Port and Developer to place each Development Parcel in the IRFD on the assessment roll and determine its Baseline Assessed Value as soon as practicable.

(ii) The Treasurer-Tax Collector will levy and collect in a segregated fund Allocated Tax Increment from the IRFD as directed by the Port as IRFD Agent to the extent consistent with the Financing Documents.

(iii) The Controller will disburse Allocated Housing Tax Increment that the City has allocated from the IRFD for affordable housing in the 28-Acre Site as directed by the Port as IRFD Agent to the extent consistent with the IRFD Financing Plan, the other Financing Documents, and the Port's approved budget.

(b) Required Cooperation and Consultation. The Port will consult with the Public Finance Division of the Controller's Office on timing, amounts, and other matters relating to Bonds. The Port, the Treasurer-Tax Collector, the Assessor, and the Controller will cooperate to ensure that the objectives of the Financing Documents will be fulfilled.

**12.4. Housing Increment Bonds.** The IRFD Financing Plan authorizes the IRFD to issue Bonds secured and payable by Hoedown Yard Facilities Special Taxes, Housing Tax Increment, or both in compliance with Governing Law and Policy.

**12.5. Validation.** Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the IRFD and matters authorized under the IRFD Financing Plan and this Financing Plan. Attorneys' fees associated with these validation actions will be Port Costs or City Costs that are reimbursable under **Section 9.2** (Port Accounting and Budget).

Developer and the Port have executed this Financing Plan as of the last date written below.

**DEVELOPER:**

**FC PIER 70, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PORT:**

**CITY AND COUNTY OF SAN FRANCISCO,** a municipal corporation, operating by and through the San Francisco Port Commission

By: \_\_\_\_\_

Elaine Forbes,  
Executive Director

Date: \_\_\_\_\_

Authorized by Port Resolution No. 17-43  
and Board of Supervisors Resolution No. \_\_\_\_  
\_\_\_\_\_.

**APPROVED AS TO FORM:**  
Dennis J. Herrera, City Attorney

By: \_\_\_\_\_

Joanne Sakai  
Deputy City Attorney